

RUSSIAN FEDERATION

REPORT OF THE FEDERAL ANTIMONOPOLY SERVICE ON COMPETITION POLICY IN 2011

Summary

The most significant event of the Russian competition policy of the year 2011 was the adoption of a number of Federal Laws aimed at improvement of the antimonopoly regulation, known as the so-called “Third Antimonopoly Package”, which came into force in January 2012 (the Federal Laws No.401-FZ “On Amendments to the Federal Laws “On Protection of Competition” and some Legislative Acts of the Russian Federation” and No.404-FZ “On Introducing Amendments to the Code of the Russian Federation on Administrative Violations” (adopted on December 6, 2011).

Besides, in December 2011, the Federal Law No.322-FZ “On Introducing Amendments to the Article 6 of the Federal Law “On Foreign Investments in the Russian Federation” and the Federal Law “On Procedures for Foreign Investments in Economic Entities of Strategic Importance for National Defense and State Security”” (hereinafter – Federal Law No.322-FZ) came into force aimed at further liberalization of control over foreign direct investments.

In 2011 improvement of Procurement Legislation continued that was aimed at improving the quality of products purchased and improving certain elements of procurement procedure, as well as at solving a number of operational problems in the sphere of public procurement, for the purposes of developing competition between suppliers of goods, works and services within the framework of public procurement.

The procedures of tenders for granting land, forest plots and subsoil plots were optimized with regard to compulsory placement of information on the official Internet web-site of the Russian Federation www.torgi.gov.ru that hosts all the information about bidding, providing for transfer of ownership rights and (or) rights of enjoinment in respect of state or municipal property. The system is implemented provides for distribution of state and municipal property on a competitive basis being a barrier for corruption.

In 2011 the new Federal Law of July 18, 2011 № 223-FZ "On Procurement of Goods, Works and Services by Certain Types of Legal Persons", that provides for the rules of making public procurements by state owned companies and natural monopolies, was elaborated and came into force in 2012. The Law obliges the abovementioned companies to report about their purchases in order to secure their transparency.

Also, in 2011, the FAS Russia prepared proposals aimed at competition development in the sphere of health care, which was provided for in the Federal Law of 21.11.2011 No.323-FZ “On Fundamental Healthcare Principles in the Russian Federation”.

Last year fighting against cartel remained a priority for the FAS Russia activity. Over the past few years, Russia has established the anti-cartel system, elaborated and put into practice the most advanced methods for proving cartels, such as dawn raids and leniency program. In 2011, the work continued on improving the antimonopoly enforcement practice in respect to cartels, in particular on the using procedures of proof taking.

The development of competition in energy markets and, in particular, creation of conditions for the formation of fair prices for oil products on the exchange auctions also has been in the focus of the FAS Russia activity over the last years. In order to increase predictability and fairness of pricing mechanisms in the oil markets of the Russian Federation, in 2011, the FAS Russia drafted the Federal Laws “On the Market Pricing for Oil and Oil Products in the Russian Federation” and “On the Circulation of Oil and Oil Products in the Russian Federation”.

In 2011, the Government of the Russian Federation adopted the rules for ensuring non-discriminatory access to services of natural monopolies on oil (oil products) transportation through pipelines as well as the standards of information disclosure by natural monopolies in a number of industries.

The FAS Russia pays considerable attention to improving the quality and efficiency of the agency. In 2011, the Authority obtained the Certificate of the International Accreditation Forum IAF, the International Certificate of the Certification Network IQNet and the Certificate of Conformity in the national system of GOST R under results of development and implementation of the international standard ISO 9001:2008 in the Central Office of the FAS Russia.

In 2011, the FAS Russia continued to develop interaction with the judges in order to build common approaches to the interpretation and application of the antimonopoly legislation and legislation on administrative violations. For this purpose during the year a number of joint activities with the judges in form of seminars, meetings and consultations were organized. The Supreme Arbitration Court of the Russian Federation has repeatedly adopted decisions on cases on violation of the antimonopoly legislation which confirmed the FAS Russia's position.

2011 was marked by fixing the position of the FAS Russia in the Rating Enforcement, annually published by an independent international publication “Global Competition Review”. The FAS Russia is presented in the ranking in line with competition authorities of Austria, Brazil, Norway, Switzerland, etc.

One of the priority activities of the FAS Russia in 2011 was development of international interaction with the Organization for Economic Cooperation and Development (OECD), the International Competition Network (ICN), the United Nations Conference on Trade and Development (UNCTAD) and the Asia-Pacific Economic Cooperation Forum (APEC).

The legal and regulatory framework developed providing the opportunity to interact with foreign competition authorities when considering violations of competition legislation with a trans-border effect. In particular, cooperation agreements were signed with the Directorate General for Competition of the European Commission, the Austrian Federal Competition Authority, and National Competition Commission of Spain.

Strengthening of cooperation with the antimonopoly authorities of the CIS countries continued, as well as with the competition authorities of the EU and the U.S.A., including in the course of investigation of specific cases of violation of antimonopoly legislation. The integration processes within the frameworks of forming of the Common Economic Space of the Republic of Belarus, Republic of Kazakhstan and the Russian Federation, where the competition issues are of key importance, have been developing.

1. Amendments to competition law and policy, the proposed and adopted

1.1. Overview of the new legal rules of competition legislation and related regulations

Developments of the Russian competition law and policy in 2011 were related to the adoption on the December 6, 2011 of the Federal Law No. 401-FZ “On Introducing Amendments into the Federal Law “On Protection of Competition” and Some Legislative acts of the Russian Federation” (hereinafter - the Law) and No.404-FZ “On Introducing Amendments to the Code of the Russian Federation on Administrative Violations”, which came into effect one month later after its adoption in January 2012.

As a whole, these legal acts constitute the so-called “third antimonopoly package” of laws.

The amendments provided for in the “third antimonopoly package” affected almost all areas of antimonopoly regulation and were intended to clarify and in some cases to liberalize the competition legislation.

In particular, the new version of the Law on Protection of Competition envisages that provisions of the mentioned Law are applied to the agreements concluded outside the territory of the Russian Federation between the Russian and (or) foreign persons or organizations as well as to actions committed by them, if such agreements or actions influence competition in the territory of the Russian Federation.

The law specifies criteria for determining the monopolistically high price of the goods. In particular, in order to increase the impartiality of competition authority's assessment of the price for goods set by economic entity occupying a dominant position, the Law provides for that the price for goods is not recognized as monopolistically high if it does not exceed price formed on the commodity exchange market, where trading organized in conformity with competition rules. In addition, the Law provides that during determination of monopolistically high price for the goods, on-exchange and off-exchange indicators of prices in world markets of similar goods may be taken into account.

The amendments also provide for changing of procedure for consideration of cases on abuse of dominant position, *inter alia* in connection with the introduction of institute of warning. In accordance with the new requirements, it is necessary to establish the fact of a dominant position before the initiation of the case. On such grounds like imposing unfair contract conditions and refusing to conclude a contract, the antimonopoly authority is obliged, before initiation of the case, to send warning to the suspended companies to stop violation within the prescribed time limits. And only in the case this requirement may not be fulfilled the competition authority has to initiate a case, and basing on the results of its consideration to issue an order to apply the administrative sanctions.

With the adoption of the Law, the term "cartel" was first introduced in the competition legislation. The Law defines cartels as the classic horizontal agreements on sharing the market, fixing prices, refusal to conclude the contract, termination of goods production, as well as bid rigging that are prohibited "per se".

Other types of horizontal and vertical agreements, with the exception of those recognized admissible in accordance with the Law on Protection of Competition, are prohibited, in case it will be established that such agreements lead or may lead to restriction of competition.

The Law sets specific prohibitions on concerted actions by introducing a new article 11¹, which emphasizes the difference between agreements and concerted actions requiring determination of the fact of restricting competition as a result of such actions.

With the adoption of the "Third Antimonopoly Package" of the laws the criminal responsibility for violation of the antimonopoly legislation is stipulated only for cartel participants and persons repeatedly abused dominant position.

A number of changes to the Law related to procedural matters. In particular, the FAS Russia can provide explanations on the decisions and (or) orders issued by the FAS Russia Commissions on consideration of cases on violation of competition legislation; the FAS Russia has the possibility to revise its decisions and orders on the basis of the new and (or) newly

discovered evidence. The changes also clarify the rights and obligations of persons involved in the case of violation of the antimonopoly legislation.

Amendments to the legislation also provide at the legislative level for reinforcement of the system for calculating “turnover fines”, taking into account of the specific mitigating and aggravating circumstances, contained in the Code on Administrative Violations.

The amendments relating to control over economic concentration were aimed at reducing of administrative burdens on medium-sized businesses and focusing on major transactions which can affect competition. Thus, the amendments unified thresholds that need primarily approval of competition authority. At present time thresholds are the following: on the total value of assets – 7 bln rub or 233 mln US dollars, on total revenue – 10 bln rub or 333 mln US dollars.

Also, the amendments changed the rules for calculating the assets and revenues, including in international transactions, in order to monitor the economic concentration.

The law toughens the requirements for government authorities prohibiting them to create discriminatory conditions for economic entities. Besides, the Law admits setting and (or) collecting payments by government authority, which were not stipulated by the legislation of the Russian Federation in the course of provision of public (municipal) services as violation of the legislation.

The third package of amendments to the Russian competition legislation actually finalized the process of its fundamental modernization. In addition, adopted amendments significantly simplify business processes, strengthen responsibility of officials that impede the freedom of entrepreneurship, increasing the efficiency utilization of the fundamental institutes of antimonopoly regulation in the Russian Federation.

1.1.1. Changes to the legislation on foreign investments

The FAS Russia as a government body authorized to exercise control over foreign direct investments has prepared draft amendments to the relevant legislative acts that were reflected in the Federal Law of 16.11.2011 No. 322-FZ “On Amendments of Article 6 of the Federal Law “On Foreign Investments in the Russian Federation” and the Federal Law “On Procedures for Foreign Investments in the Business Entities of Strategic Importance for Russian National Defense and State Security” (came into force in December 18, 2011).

These amendments narrow a range of types of activity having a strategic importance for the Russian national defense and state security. Thus, a list of strategic activities excludes activity on exploitation of radiological sources in a civil sector of economy and activity of banks without participation of the Russian Federation in the field of information encryption.

Transactions between organizations that are controlled by Russian owners as well as transactions of international financial organizations, one of the participants of which is the

Russian Federation are also excluded from the sphere of control. The list of such organizations approved by the Government of the Russian Federation, includes in particular such organizations as the International Bank of Reconstruction and Development, European Bank on Reconstruction and Development, International Financial Corporation that are set free from the necessity to have a preliminary approval for transactions concluded by them in regard to Russian economic entities.

The amendments increased criteria of indicating economic entities that carry out exploitation of subsoil areas of federal status to be under control of a foreign investor from 10 to 25% of the voting shares (stock shares); transactions concerning strategic entities in the sphere of exploitation of subsoil areas of federal value as a result of which a share of participation of the foreign investor in authorized capital of such entities doesn't increase are excluded from the sphere of control.

The procedure for consideration of applications during making a decision of a preliminary approval by the Government Commission on Control over Foreign Investments in the Russian Federation is simplified in case if there is an agreement between the FAS Russia and an applicant on fulfillment by the applicant the obligations stipulated by the Law No. 57-FZ is simplified; some procedural issues are defined more exactly.

Thus the inured amendments are directed at elimination of administrative barriers for foreign investors at performing investments in strategic sectors of the Russian economy.

1.1.2. Changes in control over public procurement

During 2011 the work on improvement of the Russian legislation on of public procurement continued.

The FAS Russia contributed to introducing some amendments to the Federal law of 21.07.2005 No. 94-FZ “On placement of Orders to supply goods, to carry out works and to render services for meeting state and municipal needs” (further – the Law on Placement of Orders).

The customers are obliged to specify a justification of initial (maximum) contract price containing information (or calculation) used by the customer; requirements to a term and (or) volume of granted guarantees for goods, works, services, goods service, expenses on goods operation, to obligations to fulfill installation and adjusting of equipment, to training of persons using and serving the equipment in documentation is stipulated.

The Government of the Russian Federation received the right to establish peculiarities of placement of certain orders for delivery of the goods, carrying out of works and rendering services for federal needs as well as an order of formation of initial contract prices.

The procedure of submitting and considering complaints is defined more clearly.

Peculiarities of placement of orders in the sphere of culture, legal aid and research works are provided.

Since January 1, 2011, the common official website www.zakupki.gov.ru is set in operation that contains information about all state and municipal orders placed in the territory of the Russian Federation. Availability of information allows participating of a larger number of suppliers in public procurement that in turn increases competition; promote transparency of public procurement, economy of budgetary funds at the expense of receiving the most favorable prices from suppliers.

A closed list of requirements to bidders (existence of legal capacity, licenses etc.) is established. Arbitrary qualifying requirements to bidders are replaced with financial guarantees of performance of contracts. Maintaining the Register on Unfair Suppliers excluding their participation in public procurement is provided.

Transition to a prior placement of orders by carrying out an open electronic auction in a limited number of electronic platforms is provided. It provided a high liquidity of an auction and minimization of risks of electronic fraud. Electronic auctions proved their efficiency as a measure that prevents collusions and instrument to develop competitive environment.

At the same time, a reform of public procurement system is not completed yet and in the near future its next stage is planned. Changes, first of all, will concern issues of regulation of relations at all stages of placement of orders, including stages of planning of purchases and performance of contracts.

1.2. Other relevant measures, including new guidelines

1.2.1. In 2011 the Rules of non-discriminatory access to oil and oil products transportation services of natural monopolies subjects through major pipelines in the Russian Federation were approved (Resolution of the Government of the Russian Federation of 29.03.2011 No. 218).

At present in Russia the following rules are valid: rules of a non-discriminatory access to services on transfer of electric energy and rendering of these services; to services on operative-dispatch management in power industry and rendering of these services; to services of Trading System Administrator of the wholesale market and rendering of these services (approved by the Resolution of the Government of the Russian Federation of 27.12.2004 No. 861); rules of a non-discriminatory access of carriers to railway transport infrastructure of general use (are approved by the Resolution of the Government of the Russian Federation of 25.11.2003 No. 710); rules of ensuring access to services of natural monopolies subjects at airports (approved by the Resolution of the Government of the Russian Federation from 22.07.2009 No. 599).

1.2.2. In 2011 the orders of the FAS Russia approved standards of disclosure of information by the natural monopolies subjects which carry out their activity in the following fields: oil and oil products transportation by major pipelines; airports; rail transportation; transport terminals; ports and use of infrastructure of internal waterways services. Violation of standards requirements for information disclosure in relation to natural monopolies subjects is an administrative violation.

1.2.3. The FAS Russia took part in formation of the Federal law No. 223-FZ of July 18, 2011 "On purchase of goods, works, and services by separate types of legal entities".

The law defines the general principles and main requirements, including requirements to natural monopolies, state corporations and companies with state interest, on purchase of goods, works and services.

Such principles include:

- information openness of purchases;
- equality, fairness, absence of discrimination and unreasonable restrictions of competition in relation to purchasers;
- target and economically effective money expenditure on purchasing goods, works, services (considering, when needed, the cost of life cycle of purchased goods) and realization of the measures aimed at reduction of purchasers expenses;
- absence of access restriction to participate in tenders.

The legal provisions obliging companies to publish the procurement rules come into force on April 1, 2012.

1.2.4. The Resolution of the Government of the Russian Federation of 03.08.2011 No. 650 was adopted according to which since January 1, 2012 the information on tenders on granting the land lots, wood lots, lots of subsurface areas should be published on the web-site www.torgi.gov.ru, official site of the Russian Federation for placement of information on tenders.

Earlier, placement of information about tenders for the right to conclude contracts of lease of state and municipal property as well as contracts on transfer of rights on uniform technologies on the abovementioned web-site was obligatory. Placement of information on tenders on the single Federal Internet portal will allow providing openness of tenders, equal access of business to the state and municipal property and rights of use of natural resources.

With a purpose of increasing transparency and openness of procedure of tendering as well as increasing efficiency of control over tendering, the special "short" tendering appealing procedure is launched. This norm assumes assigning of procedural violations and their

consideration in the accelerated mode within 7 days. Thus the FAS Russia can issue instructions to eliminate violations before the transaction is concluded.

1.2.5. The new Federal Law of 21.11.2011 No. 323-FZ “On health protection of citizens in the Russian Federation” includes many key proposals of the FAS Russia directed at the following: ensuring equal access of the medical organizations of any ownership form to the market of rendering of medical services; establishing of uniform requirements for the medical organizations of state, municipal and private health systems; fixing the requirements to medical workers to write out a prescription for medicines only on prescription forms; exception of a ban on participation in rendering of hi-tech medical care by the private medical organizations; establishing of definition of the conflict of interests of medical workers and pharmaceutical companies as well as many others.

1.2.6. The FAS Russia took part in drafting the Decree of the Government of the Russian Federation of 10.02.2011 No.167-r on approving of the list of trading commodities in regard to which the off-exchange transactions, including long-term supply contracts, are subject to compulsory registration by a commodity exchange.

1.2.7. The FAS Russia has developed a draft Resolution of the Government of the Russian Federation providing for an approval of standard form contracts on technological connection to electric grid. The Russian Government’s Decree of 01.03.2011 No. 129 “On Amendments of the Rules for Technological Connection of power receivers of electric power consumers, facilities of production of electric energy as well as facilities of power supply sector owned by network organizations and other persons to electric networks” accepted the FAS Russia proposals.

The standard forms of contracts are developed in accordance with the civil legislation as well as of competition legislation and are of mandatory implementation by all network organizations.

The introduction of standard form contracts that is mandatory for network companies will allow the following: excluding of imposition of unfavorable contract conditions concerning technical connection on consumers; eliminating of possibility to delay the term of concluding the contract by network companies as well as generally simplify the access of small and medium businesses to electricity grid.

1.2.8. In 2011 the FAS Russia took an active part in drafting of documents concerning the development of agreements of the “competition set” forming a legal framework of the Common Economic Area of Belarus, the Republic of Kazakhstan and the Russian Federation. The documents were adopted in November - December 2010 and came into force on January 1, 2012, including:

The Agreement on Common Principles and Rules of Competition;

The Agreement of Common Principles and Rules of Activity of Subjects of Natural Monopolies;

The Agreement on Common Rules for Granting Industrial Subsidies;

The Agreement on Common Rules for State Support of Agriculture;

The Agreement on State (Municipal) Procurement.

The key agreement of the “competition set”, which creates the architecture of the competition regulation system within the Common Economic Area, is the Agreement on Common Competition Principles and Rules (hereinafter the “Agreement”).

The Agreement contains common principles for application of the competition policy in the states-parties to the Agreement, which form the basis for harmonization of the national legislation, and uniform competition rules, which constitute direct norms, that will regulate relations between undertakings of the states-parties to the Agreement on transnational markets on the territory of two or more signatory states, and concern, *inter alia*, anticompetitive agreements, abuse of dominance and unfair competition.

According to the Agreement, the supranational body - the Eurasian Economic Commission (hereinafter “EEC”) is to exercise control over compliance with the uniform competition rules. The powers of the EEC are the following: to investigate, and to hear cases on violation of the uniform competition rules, to request, *inter alia*, confidential information, to impose penalties for violation of the uniform competition rules, to make decisions which are binding upon all the undertakings.

For further development and implementation of the Agreement the set of documents, is to be elaborated within 2011-2012. This set, *inter alia*, includes the following:

Guidelines on Calculation and Procedure for Imposition of Penalties for Violation of Competition Rules;

Procedures for Consideration of Applications (Materials) on Violation of Competition Rules;

Procedures for Investigation of Violations Competition Rules;

Procedures for Hearing the Cases on Violation of Competition Rules;

Procedures for Interaction on, *inter alia*, Information, between the Eurasian Economic Commission and the authorized bodies of the Parties;

Guidelines on Competition Assessment;

Guidelines on Determination of Monopolistically High (Low) Prices.

Special attention during the elaboration process was paid to creation of the mechanism for interaction between the national authorized competition bodies, *inter alia*, the FAS Russia,

and the supranational one- the EEC, and of an effective system of prevention of the antimonopoly legislation violation on both national and supranational levels.

1.2.9. The FAS Russia has continued the practice of conclusion of agreements on interaction with other state bodies of the Russian Federation and associations to ensure timely and effective cooperation at prevention and detection of violations of the antimonopoly legislation. The following agreements were concluded inter alia:

- Agreements of interaction between the FAS Russia and Moscow Government, the Republic of Sakha (Yakutiya) Government; the Ministers' Cabinet of the Chuvash Republic; the Government of the North Osetiya-Alaniya Republic;
- Agreement on Interaction between the FAS Russia and Non-Commercial Partnership "Association of Corporate Lawyers";
- Agreement on Cooperation between the FAS Russia and the Russian Academy of Justice.

1.2.9.1. In 2011, the FAS Russia has continued to conclude new type bilateral agreements with foreign competition authorities, which provide for information exchange mechanisms while investigating and exercising control over economic concentration:

- Memorandum of Understanding for Cooperation between the Federal Antimonopoly Service and the Directorate-General for Competition of the European Commission (Brussels, 10.03.2011);
- Agreement on Cooperation between the Federal Antimonopoly Service and the Austrian Federal Competition Authority (Moscow, 19.05.2011)
- Memorandum of Understanding for Cooperation between the FAS Russia and the National Competition Commission of Spain (Madrid, 12.12.2011).

Moreover, the FAS Russia concluded model documents on cooperation in competition policy with Competition Authorities of Bulgaria, Poland, China, Brazil, Finland, India, France and Turkey.

1.3. Governmental proposals concerning new legislation

1.3.1. Proposals on changes to the anticompetitive agreements

- Amendments to the Federal Law of 12.08.1995 No.144-FZ "On Operational Investigation Activity" provide for the law enforcement bodies to conduct operational investigation activities upon the request of antimonopoly bodies and to transfer them the information on the results of such activities which may serve as cartel evidence.

- Amendments to the Criminal Procedure Code of the Russian Federation concerning the fact that the motive for initiation of criminal proceedings on the basis of Article 178 of the

Criminal Code of the Russian Federation is a decision of the antimonopoly body which found the fact of violation of the antimonopoly legislation.

1.3.2. Proposals on changes to the legislation on oil and petroleum products

The FAS Russia has elaborated drafts of federal laws “On Market Pricing for Oil and Petroleum Products in the Russian Federation” and “On Circulation of Oil and Petroleum Products in the Russian Federation” so as to improve predictability and objectivity of pricing mechanisms on petroleum products markets of the Russian Federation. In particular, it is proposed to use as basic indices of market prices the exchange quotations for oil and principal petroleum products (gasoline, diesel fuel, aviation fuel, residue fuel), over-the-counter prices for oil and main petroleum products, comparative prices on foreign markets. Prices arbitrage between the aforementioned indices will allow to orient petroleum products prices to the market level and not allow them to increase arbitrarily.

The law draft “On Circulation of Oil and Petroleum Products in the Russian Federation” sets forth certain structural and behavioral remedies, which encourage creation of real competition conditions on the internal market. In particular, it concerns the issues to prevent M&A transactions or division of land lots for construction of filling stations to the companies which local market share already exceeds the set threshold. Another structural remedy concerns organizational separation on the basis of activities of undertakings involved into wholesale and retail sale of petroleum products. Independent filling stations are to buy fuel on the same conditions as the selling companies - owners of the filling stations, which belong to the vertically integrated companies. It is binding to lead a separate calculation of costs and income on principal types of activity. Moreover, the law draft sets forth the obligation to publicize information on stock of petroleum products in oil reservoir.

The FAS Russia initiated the process of amending the tax legislation so as to balance the situation on the petroleum products markets. Application of the formula definition of the tax rates for gasoline and diesel fuel will allow to optimize the level of tax burden on the oil sector during the period of significant fluctuations on global markets; it will prevent groundless increase of prices in supply of fuel to the internal market and excessive price volatility, which endangers stability of the petroleum products internal market and economy in general.

1.3.3. Proposals to improve the trade activity legislation

The FAS Russia has elaborated and introduced to the Government of the Russian Federation the draft of the Federal Law “On Introduction of Amendments to Certain legislation Acts of the Russian Federation” (in part concerning trade activity).

Adoption of the aforementioned bill will encourage development of competition in trading of alimentary commodities, *i.e.* it will:

- specify the definition of the trade network, which will eliminate legal uncertainty for the trade activity participants;

- set forth clear requirements to trading undertakings, the full list of unacceptable terms and conditions in sale-and-delivery alimentary commodities;

- specify the list of the executive bodies that exercise state control (review) over compliance of undertakings-trade-participants with the requirements set forth by the Law on Trade.

1.3.4. Regional Programs on Competition Development

In accordance with the Ordinance of the Russian Government of May 17, 2009 No. 691-p, in 2011 the approved programs on competition development were implemented in regions.

The majority of regional offices of the FAS Russia are executors or co-executors of certain types of the planned work.

One of the instruments for implementation of regional competition policy is agreements on interaction concluded between the highest government bodies of the subjects (constituent entities) of the Russian Federation and the FAS Russia. The subject matter of agreements, inter alia, concerns implementation of regional programs. There were 16 agreements concluded, as of the end of 2011.

Issues associated with implementation of regional programs are discussed at the sessions of established under all the regional offices of the FAS Russia public consultation and expert councils, which include representatives of non-commercial associations, public and scientific organizations, mass media and etc.

2. Competition Law and Policy Enforcement

For the purposes of prevention and suppression of anticompetitive practice in 2011 the FAS Russia initiated 11431 proceedings, among which 9560 constituted violation of the antimonopoly legislation. In total, the whole volume of fines amounted to 12,8 bln. rubl (appr. \$400 mln.).

2.1. Actions against monopolistic activity

2.1.1. Description of competition authorities and courts activity

In 2011 the FAS Russia initiated 3681 cases on monopolistic activity (abuse of dominant position and anticompetitive agreements of economic entities) in the commodity and financial markets, which is 10% higher than the previous year.

Preventing abuse of dominant position

In 2011 the competition authority received 16225 complaints about abuse of dominant position by economic entities. The most prevailing reason for the complaints is still the imposition of unfavorable terms of contracts. 3199 cases were filed, 306 of which were initiated

by antitrust authorities, 889 of the proceedings were terminated due to non-confirmation of a violation. Out of the cases remaining under consideration 2310 decisions on admission of the violation were made and 1684 orders were issued. 801 decisions that were taken in 2011 were appealed to the court. 134 decisions were fully admitted as legitimate by the court, 26 decisions were admitted as fully illegitimate, and 11 were admitted as partially invalid, the rest are under appealing procedure now.

Suppression of anti-competitive agreements of economic entities

In 2011, the competition authority received 1661 complaints about the agreements (concerted actions) of economic entities restricting competition. The greatest number of complaints (29%) is filed in connection with the establishment (maintenance) of prices (tariffs), discounts, markups (extra charges), margins, 20% decrease or maintenance of prices at auction, with the imposition of unfavorable terms of the contract - 17%. 482 cases were initiated, 214 of them were initiated on the initiative of the competition authority. 315 cases were admitted as violations and 547 prescriptions were issued. 132 decisions taken in 2011 were appealed to the court, out of which 16 decisions were considered entirely legitimate, 5 decisions were admitted as invalid, 2 decision as partly invalid, and the rest are under appealing procedure now.

The practice of leniency program application

According to the Russian legislation only the first person submitted an application can expect to be given exemption from administrative liability for participation in the cartel.

In 2011 the FAS Russia received 20 leniency applications.

The major markets connected during investigations on the basis of applications received, are the follows: chlorine market, market of liquid caustic soda, financial services market, health care market, the construction market, and others.

2.1.2. Description of typical cases

Preventing of abuse of dominant position

Preventing abuse of dominant position in the oil products market

In 2011 the so-called “second wave of cases” against major oil companies was completed.

Decisions and prescriptions of the FAS Russia on 4 vertically integrated oil companies (JSC “TNK-BP Holding”, JSC “Gazprom Neft”, JSC “NK “Rosneft” and JSC “LUKOIL”) on violation of Article 10 of the Law on Protection of Competition issued in 2009 were appealed in arbitration courts.

According to the results of cases consideration in the courts, JSC "TNK-BP Holding", JSC "NK" Rosneft" and JSC "LUKOIL" concluded amicable agreements with the FAS Russia.

On 15.02.2011 the Presidium of the Supreme Arbitration Court confirmed the legitimacy and the validity of the decision and order of the FAS Russia given to JSC "Gazprom Neft" (removal of goods from circulation resulted in the increase of prices of goods).

Following consideration of the "second wave of cases" the oil companies paid more than 15 bln rub (about U.S. \$ 500 mln) to the budget of the Russian Federation.

In 2011 the "third wave of cases" against 5 vertically integrated oil companies (JSC "TNK-BP Holding", JSC "Gazprom Neft", JSC "NK"Rosneft", JSC "LUKOIL" and JSC "APK "Bashneft")) was held under the Article 10 of the Law on protection of competition.

At the stage of consideration of the cases by the FAS Russia and taking into account the decisions made by the Supreme Arbitration Court during the "second wave of cases" in favor of FAS Russia, the companies admitted their fault and voluntarily eliminated the violations.

In accordance to the Article 14.31 of the Code on Administrative Violations of the Russian Federation, the oil companies were liable to pay a 4 bln rub fine (about U.S. \$ 130 mln), which was fully paid to the budget.

It should be noted here that interpretation of legal norms contained in the decisions of the Supreme Arbitrage Court is obligatory for all and needs to be applied during consideration of similar cases by all Arbitrage courts. Such decisions are of high importance for competition enforcement.

Preventing abuse of dominant position in the industry

In 2011 the FAS Russia admitted the JSC "OK RUSAL - Trading house" (hereinafter - JSC "OK RUSAL – TD") violated Article 10 of the Competition Law. The violation was expressed in granting the priority right to economic entities submitted their applications to purchase silicium KR1 brand at a later date than OAO "Permtsvetmet".

Moreover, the company has not fulfilled applications of JSC "Permtsvetmet", having economic and technological capabilities to carry out the shipment of products.

JSC "OK RUSAL – TD" group of persons occupies dominant position in the crystalline silicium KR1 brand market within the geographical boundaries of the Russian Federation.

As a result, the actions of "OK RUSAL - TD" lead to the restriction of competition in the market of secondary aluminum alloys in the Russian Federation. JSC "Permtsvetmet" was put in unequal conditions with other Russian companies-producers of secondary aluminum alloys. Moreover, lack of supplies of JSC "OK RUSAL - TD" grade silicon KR1 to the JSC "Permtsvetmet" put at risk the last non-fulfillment of contractual obligations.

Preventing abuse of dominant position in the port services market

In 2011 the FAS Russia admitted JSC “IPP”, the owner of a specialized terminal in the Novorossiysk Commercial Sea Port, which provides technological bunkering process, violated the Article 10 of Competition Law by creating barriers to entry into the port services market.

The applicants, four economic entities that provide services for bunkering (refueling ships with fuel), appealed actions of JSC “IPP” on termination the contract with them for provision of services for receiving, stockpiling and shipment of oil products unilaterally, making it impossible for applicants to fulfill contractual obligations. The defendant referred to the excessive workload of the terminal, which could lead to a breach of security requirements at the port.

Besides, it was founded that after termination of contracts with these companies JSC “IPP” held a contest for the selection of companies for the provision services for transshipment of bunker fuel for the “IPP” at the “IPP” terminal. The winner of the contest became JSC "NCSP Fleet", a member of a "Novorossiysk Commercial Sea Port" group of persons together with JSC “IPP”.

At that, the volume of oil products trans-shipment, stated in the tender conditions, was not less than the actual volume realized by canceling the contract, indicating the absence of technical or technological limitations for transshipment of oil products.

These actions were admitted by the FAS Russia as unreasonable impediments services for transportation of oil to persons not belonging to “IPP” group of persons.

During case consideration the Applicants submitted a request that the JSC “IPP” offered to companies-applicants to conclude the contract with JSC “IPP” for services for receiving, stockpiling and shipment of oil products. Contracts were signed by the applicants.

Considering voluntary elimination of violation, the FAS Russia terminated the proceedings.

Preventing abuse of dominance on helium market

In 2011 the FAS Russia considered a case against LLC “Gazprom Orenburg”.

LLC "Gazprom Orenburg" is the sole producer of helium gas and helium concentrate in the Russian Federation, it holds a dominant position in the relevant product markets, while its main customer was the LLC "Krior".

In March 2011 LLC "Gazprom Orenburg" unilaterally unreasonably increased the price for helium gas.

Considering the fact that the prices for the supply of helium gas were not coordinated, on March 2011 LLC "Krior" notified LLC "Gazprom Orenburg" on stopping to take this product.

As LLC "Krior" lacks other sources and methods of obtaining the mentioned goods in the required volumes, the situation led to the withdrawal of gaseous helium grade "B" from circulation.

After giving up the delivery of helium LLC "Krior" while manufacturing intended to use its own reserves of helium concentrate, located in the storage of LLC "Gazprom Orenburg".

Delivery of industrial gaseous helium and helium concentrate was carried out to the LLC "Krior" on a separate pipeline that connects the Colliding helium Plant "Gazprom Orenburg" with the helium liquefaction machine of LLC "Krior".

However, on April 2011 LLC "Gazprom Orenburg" submitted a notice to LLC "Krior" about the emergency on the pipeline and the termination of supply of helium concentrate.

It was revealed by the FAS Russia that some actions of LLC "Gazprom Orenburg" testified tightening timing of repair and the documents did not confirm the validity of the actions committed by unscheduled repair of the pipeline and its shutdown.

The result of such actions on the disconnection of the pipeline supply of helium concentrate from the operation during the period 13.04.2011-16.07.2011 was the creation of barriers to entry into the market of production and sale of liquid helium for LLC «Krior».

On October 25, 2011 the FAS Russia took a decision to admit LLC "Gazprom Orenburg" violated points 2 and 9 of Part 1 of the Article 10 of the Law on Protection of Competition.

Violation of competition legislation by the economic entity was made on the socially important markets and led to the disruption of the supply of liquid helium in medical institutions of the Russian Federation.

On the fact of violation of the law administrative investigation was carried out and a fine for 11.934 mln rub was imposed.

Fighting against cartels

A cartel in the steam coal market

JSC "OGK-4" filed an application to the FAS Russia with the statement that JSC "SUEK" fixed monopolistically high prices on the steam coal and imposed on JSC "OGK-4" unprofitable contract conditions.

JSC "SUEK" is the largest company in the Russian Federation extracting steam coal which is used by the power industry enterprises for production of thermal and electric energy.

By results of consideration of the appeal, the FAS Russia initiated a case suggesting possible violations by JSC "SUEK" of Part 1 Article 10 of the Law on Protection of the Competition.

At the same time the FAS Russia has received the information from the Department of Economic Security of the Ministry of Internal Affairs of Russia (further - DES) that JSC

“SUEK” and other participants of the market of power coal could have concluded the anticompetitive agreements (or carried out concerted actions).

New participants have been involved in the process of consideration of a case by the FAS Russia. The Commission of the FAS Russia has qualified the actions of participants of the market of power coal as violation of Part 1 of Article 11 of the Law on Protection of Competition, expressed in participation of the specified persons in agreements restricting competition and (or) the concerted actions in the market of the power coal, the markets sharing, an establishment and maintenance of the prices, definition of winners of tenders.

Documents and the information presented by the DES contained records of negotiations of the official of JSC “SUEK” with their customers, including officials of other coal companies, concerning coordination between them of terms of delivery of power coal to end users, including repayment terms, the prices, volume of deliveries.

The FAS Russia carried out the investigation of this case and confirmation of the fact of the cartel agreement between coal market participants in cooperation with DES. During the investigation the FAS Russia used the materials and information obtained through the implementation of DES operational and investigative activities. As part of this case firstly the scheme of interaction of FAS Russia and the Ministry of Internal Affairs of the Russian Federation was worked out taking into account the procedural peculiarities of actions of the two Authorities.

In accordance with the Order of FAS Russia and the Russian Ministry of Internal Affairs dated 30.12.2004 No. 878/215 “On Approval of the Order of Interaction between the Ministry of Internal Affairs of the Russian Federation and the Federal Antimonopoly Service” an exchange of information and materials was carried out. The officers of given agencies jointly conducted a number of legal proceedings, including the participation of the FAS Russia’ officers in the interviewing of persons who knew about factual circumstances of the case, which were held by the Ministry of Internal Affairs of the Russian Federation.

These materials were also used during the preparation of FAS Russia's decision on the case.

As a result of considering of the case, the FAS Russia determined JSC “SUEK”, JSC “Russian coal” and JSC “Stroiservice” as participants of the competition-restricting agreements in the coal market aimed at establishing the price of coal and the sharing of the steam coal market on the structure of sellers.

The conclusion of the FAS Russia based on the FAS Russia’s decision was transferred to the Russian Ministry of Internal Affairs for the purposes of proceedings provided for in case of violation of Article 178 of the Criminal Code of the Russian Federation (monopolistic activity).

OJSC “SUEK”, JSC “Russian coal” and JSC “Stroiservice” have appealed the FAS Russia’s decision in the Arbitration Court, which granted the petition. After a series of trials in courts of all levels the FAS Russia filed a complaint in the Supreme Arbitration Court for review of all previous judicial acts.

A cartel in the chlorine market

In 2011, the cartel in the chlorine market has been detected. The FAS Russia has accused a number of manufacturers and sellers of chlorine (JSC “Caustic”, CJSC “Chloraktiv”, JSC “Himprom”, LLC “Bekborn”, LLC “RusTrade”, a group of persons: LLC “Sibur”, CJSC “Sibur Holding”, JSC “Sibur-Neftehim”; group of persons LLC “The Trading House “Himprom”, LLC “Himprom”) in antimonopoly law infringement.

It has been revealed that the companies have entered into agreements on market-sharing on terms of volume of sale and of structure of buyers (customers), have defined a share in the chlorine market for each company, have fixed buyers (customers) to each manufacturer (its dealers). Also they carried out monthly data exchange about consumers and volumes of goods delivered. The Coordination Council has been created for coordination of activity of participants.

The FAS Russia has sent all the files of the case to the Ministry of Internal Affairs of the Russian Federation in order to solve the issue whether the criminal proceedings has to be initiated, and has also issued a prescription to JSC “Caustic”, CJSC “Chloraktiv”, JSC “Himprom”, LLC “Bekborn”, LLC “RusTrade” and to a group of persons: LLC “The Trading house “Himprom” and LLC “Himprom”.

The companies were fined in the amount of 51,471,007 rubles. A group of persons consisting of: LLC “Sibur”, CJSC “Sibur Holding”, JSC “Sibur-NefteHim” were exempted from administrative liability according to the notes of Article 14.32 of the Administrative Code.

In addition, the Ministry of Internal Affairs of the Russian Federation, having applied the FAS Russia’s files on the case, initiated a criminal case in accordance with the Paragraph 2 of Article 178 of the Criminal Code of the Russian Federation.

This is a case of a classic cartel on dividing the market by the volume of sale and the structure of buyers (customers), that existed 3.5 years and was detected on the basis of documents and information received in the course of “dawn raids” (more than 10 raids during the year with the participation of the law enforcement agencies) and leniency application.

A cartel in the market of liquid caustic soda

The FAS Russia has considered that the number of companies¹ violated Clauses 1,3,4 Part 1 of the Article 11 of the Law on Protection of Competition, by concluding agreements on the market of liquid caustic soda, which led to the establishment and maintenance of prices at the wholesale market of liquid caustic soda, to a sharing of the commodity market by the volume of sales, the structure of sellers, buyers, and according to the territorial principle, and to economically and technologically unjustified refusal to conclude a contract with purchasers of liquid caustic soda.

In the course of considering the case, a comprehensive analysis with participation of leading expert organizations was carried out. All companies participating in the cartel were given orders to eliminate violations of the antitrust laws.

This is a classic price-fixing and market-sharing cartel, which involved more than 20 organizations, and which operated for seven years on the basis of the syndicate, that is, the producers gave the whole product or a large part of the product to the distributive organization (“United Trading Company”), which regulated prices, production volumes and distributed customers. The cartel is disclosed on the basis of documents and information received in the course of unannounced inspections (over 20 inspections were conducted during the 2 years with the participation of law enforcement agencies).

The largest fine in the history of the application of Article 14.32 of the Administrative Code of the Russian Federation (more than 912 million rubles), was imposed on the organizer of the cartel “United Trading Company” JSC. The case was referred to law enforcement agencies to address the issue of a criminal case under article 178 of the Criminal Code of the Russian Federation.

A cartel in the market of railway transport.

In 2011 the FAS Russia declared JSC “RZD” and LLC “South Transport Company” having violated Part 1 of Article 11 of the Law on Protection of Competition (the agreement of economic entities).

The case was initiated on the basis an exit inspection of the FAS Russia, as well as on the consideration of a number of complaints. In particular, the company “Euro-Beton”, “SMU-21” complained that the JSC “RZD” and LLC “South Transport Company” engaged in loading and unloading at the railway station in Sochi, deprived consignors and consignees to exercise loading

¹ JSC “United Trading Company”, LLC “Sibmenegement”, LLC “Galopolimer”, JSC “Kaustik” (Volgograd), LLC “Nikohim”, JSC “Himprom” (Volgograd), JSC “Himprom” (Novocheboksarsk), CJSC “Renova Orgsintez”, JSC “Kaustik”(Sterlitamak), JSC “Galpolimer”.(Kirovo-Cepek), LLC “Sibur”, JSC “Bashkirskaia himiya”, CJSC “Sibur Holding”, JSC “Sibur-Neftehim”, JSC “MHK”Evrohim”, LLC “Novomoskovskiy hlor”, JSC “NAK”AZOT”, CJSC “NPO REAGENTY”, JSC “Sajanskhimplast” (Sajansk), JSC “Sajanskhimplast” (Irkutsk), LLC “Sibirskaya himicheskaya company”, LLC “Usolehimprom”, LLC PO “Himprom”, LLC “Trade House “Himprom”, LLC “Soda-Chlorat”, CJSC “Ilimhimprom”.

and unloading of goods on their own. At the same time, LLC “South Transport Company” is a rival of claimants in the building materials market.

The FAS Russia revealed that JSC “RZD” signed a contract with LLC “South Transport Company” to transfer the company to rent asphalt pavement adjacent to public ways freight yard and the railway station of Sochi, which made loading and unloading of aggregates arriving at the station of Sochi railway transport for general use, including for the construction of Olympic Games facilities.

Under the agreement, the activities on the real estate passed may be exercised only by the lessee that makes it impossible to carry out unloading of inert materials by the consignee with the use of existing infrastructure of JSC “RZD”. Thus, shippers and consignees were denied the legal right to carry out loading and unloading of goods on their own in public places in the cargo yard of the railway station of Sochi, the “RZD” imposed the market participants services of LLC “South Transport Company” and that in turn was unjustified advantage over to its competitors in the market of construction materials.

The practice of exemption from administrative liability for violations of antimonopoly legislation (a leniency program).

Exemption from administrative liability in the industry sector

During consideration of the cartel case on the market of production and sale of the chlorine, the group of persons consisting of: JSC "Sibur", CJSC "Sibur Holding" and OJSC "Sibur-Neftekhim" (Nizhny Novgorod)

- submitted an application for exemption from administrative liability in accordance with the notes to Article 14.32 of the Administrative Code;

- stated that there is an agreement that led to the establishment of prices and market sharing chlorine by volume sales, and the composition of buyers;

- refused from further participation in the agreement that violates antitrust laws.

These circumstances have led to the release of a group of persons consisting of: JSC "Sibur", CJSC "Sibur Holding" and OJSC "Sibur-Neftekhim" (Nizhny Novgorod) from administrative liability.

Exemption from administrative liability in the financial services market

In the course of the proceedings in the financial services market of JSC “Alfa Insurance” and then of JSC “SG “MSK”, LLC “Rosgosstrakh”

- have submitted an application for exemption from administrative liability in accordance with the notes to Article 14.32 of the Administrative Code;

- announced the conclusion with CJSC "KRK" of the agency contracts in which the applicants carried out fixing the amount of insurance charge for the insurance of a vehicle, being the subject of mortgage of CJSC "KRK" or Commercial Bank "KRK", at the level 9.99% of the initial value of the vehicle.

These circumstances have led to the release of "Alfa Insurance" from administrative liability. JSC "SG" MSC "and" Rosgosstrakh "were not the persons who have addressed the first to the FAS Russia with such statements, so minimum administrative penalties were applied to them.

Exemption from administrative liability in the construction industry

LLC "PromStroyNerud" applied to the FAS Russia with a statement on the release from administrative liability for violation of antitrust law in accordance with notes to Article 14.32 of the Administrative Code, which later formed the basis for initiation of a case.

The applicant admitted to the conclusion and subsequent involvement in anti-competitive agreement with the Company "Dorstroy – XXI" about the participation in the auction for the right to use subsoil and presented the relevant evidence, including information received from another bidder - a receipt with the obligation to pay money for non-participation in the bidding.

Thus, the LLC "PromStroyNerud" complied with all requirements of the notes to Article 14.32 of the Administrative Code.

These circumstances have led to the release of LLC "Prom Story Nerud" from administrative liability.

2.2 State control over economic concentration

2.2.1 Statistical data on the number, size and type of transactions, the notification of which was received and / or which carried out monitoring for in accordance with competition law

In 2011, the FAS Russia considered 3282 applications (pre-merger notifications) and 2124 notifications (post-merger notifications) from business entities: satisfied (noted by) - 3222 applications (296 of them - with remedies) and 2057 notifications, refused to agree - 60 applications and 67 notifications.

Due to the increase of thresholds of indicators used to monitor the economic concentration in the analyzed period there is a significant reduction in the number of applications considered by the antimonopoly authorities (in 2009 - almost 30% by 2008, in 2011 - up to 56% by 2008) while the number of large transactions subject to prior control is still considerable.

With regard to the provision of applications, they were mostly related to the acquisition of the right to dispose of more than 25% of voting shares (887), acquiring the right to dispose of more than one third of shares in the share capital of limited liability companies (698), acquisition

of rights enabling to determine the conditions of an economic entity of entrepreneurial activity or exercise the functions of its executive body (539).

2.2.2 Description of typical cases

Approval of an application with remedies

1. The FAS Russia granted the request of CJSC “Moscow Interbank Currency Exchange” (CJSC “MMVB”) on the acquisition of rights enabling to determine the conditions for business activity of JSC “Russian Trading System” (JSC “RTS”), about the acquisition by CJSC “MMVB” 100% of the voting shares of JSC “RTS”, 100% of the voting shares of NKO “RTS Raschentnaya Palata” (CJSC), 100% voting shares of CJSC “RTS CC”, 97.76% of the voting shares of CJSC “DKK”, on the reorganization of CJSC “MMVB” in the form of takeover of JSC “RTS”. The CJSC “MMVB” and the JSC “RTS” are the largest stock market procedures in Russia.

In considering an application it was revealed that these transactions may lead to restriction of competition in the market for organizing trade securities and derivative financial instruments, as well as custody services on the market in the segment of the settlement depositories.

Therefore, simultaneously with the decision to grant said petition issued a binding order under which CJSC “MMVB”, CJSC “Fondovaya Birza MMVB”, JSC “RTS”, as well as NKO CJSC “NRD” and CJSC “DKK” can modify existing and establish new fees for their services only to customers with their approval. This will prevent the abuse of dominant position including the establishment of unjustifiably high prices for services.

2. In 2011 the FAS Russia considered the request of Joint Stock Company “Compagnie des Levures Lesafre” about the acquisition of shares in the amount of 100% of the charter capital of the Company with LLC “Voronezhskie Drozzi”

Summary results of the assessment of the competitive environment as well as a comparison and analysis of quantitative indicators of the market sales of baking yeast, led to the conclusion that the considered product market is highly concentrated within the boundaries of the Russian Federation.

The share of the “Lesafre” group of persons with regard to the sales volumes of yeast baking by company LLC “SAF-NEVA” in the territory of Russia, as well as the imports of the yeast by companies of “Lesafre” group constituted to 40% in 2009.

LLC “SAF-NEVA” which belongs to “Lesafre” group of persons had high market potential compared to other smaller business entities even before the transaction (the bigger of the entities is LLC “Voronezhskie Drozzi” with the share more than 12%). After the transaction JSC “Compagnie des Levures Lesafre” may affect the general conditions of the commodity

market including by increasing or decreasing price of baker's yeast production of LLC “SAF-Neva” and LLC “Voronezhskie Drozdi”. However, the analysis of this transaction took into account the beneficial effects for consumers associated with an increase in technical level of production.

Given these circumstances, the FAS Russia has approved the transaction with the issuance of regulations to carry out actions aimed at ensuring competition in the bakery yeast market.

Approval of an application

1. “Novaya Telefontnaya Kompaniya” (NTK) has provided mobile services at frequencies 900/1800 MHz in the Far East Federal District, to more than 1.5 million subscribers and possessed a market share of about 40%. Three major federal operators wanted to purchase NTK: VimpelCom, MegaFon and MTS. During the review of transactions, the FAS Russia analyzed the market for mobile services in the territory of the Russian Federation of the Far East Federal District while using data on the allocation of frequency spectrum to potential buyers and NTK regarding the possibility of providing certain telecommunications services.

The analysis found that mobile phone services in the Far Eastern Federal District provided potential buyers with shares: VimpelCom - less than 3%, MegaFon - 25%, MTS - about 30%. The FAS Russia also took into account that the services provided by VimpelCom in the Far East Federal District in the IMT-2000 standard had other consumer qualities than provided by NTK, MTS and MegaFon in the standard GSM.

Given the results of the analysis, as well as taking into account the near-term prospects of the development of the market for mobile services the FAS Russia agreed a VimpelCom deal, denying companies MTS and MegaFon.

2. The deal on merger into a single group of persons of Commercial Sea Port of Novorossiysk and Maritime Commercial Sea Port (Leningrad region) planned geographical expansion of business operations of the beneficiary - Novoport Holding - in the Black Sea and the Baltic Sea due to the formation as a result of the transaction made by the combined group of persons JSC “NMTP” and LLC “Primorskiy Torgoviy Port”.

The FAS Russia analyzed the market of transport cargo handling, loading and unloading activity, maintenance of vessels. Given the fact that the ports are considered in various marine basins the FAS Russia agreed on a deal.

Rejection of an application for acquisition

In 2011, the OJSC “Gazprombank” (hereinafter – the GPB) applied to the FAS Russia for approving of the acquisition of 50,9% of voting shares of OJSC “Moscow United Electricity Network Company” (hereinafter – the MOESK) for trust management, which performs the transfer of electricity and thermal energy.

Within the frameworks of consideration of an application, the FAS Russia established that the GPB is included in the list of affiliated persons of OJSC “Gazprom”. At the same time the list of affiliated persons includes a number of legal persons which the main activity is the generation of electric energy.

As of the date of application, the GPB and the MOESK were belonged to the different groups of persons; however, after the transaction the MOESK would be included in the group of persons of the GPB.

Therefore, the combination of transmission and generation of electric power energy would occur within the group of affiliated persons of OJSC “Gazprom”, which is prohibited in accordance with the legislation, as a consequence of such combination may restrict competition on the electric energy markets.

Based on this, the FAS Russia to reject this application.

2.3. State control over acts, actions, agreements or concerted practices restricting competition of the federal executive authorities, state authorities of the subjects of the Russian Federation, the local self-governments, other organizations vested by the functions or rights of the mentioned authorities and the Central Bank of the Russian Federation

2.3.1 Summary of activities of competition authorities and courts

In 2011 as well as in 2010, the biggest number of violations of competition law was committed by the state and local authorities. 6384 cases were initiated under Articles 15, 16, 17, 17.1, 18, 19-21 (prohibition of violations of antimonopoly legislation by authorities) of the Law on protection of competition.

In 2011 there were considered 3448 applications in respect to acts and actions of state and local authorities (article 15). 1691 applications were submitted due to unjustifiable restriction of economic entities activity. 3488 cases were initiated. There were taken 3033 decisions on admitting violations and issued 2192 instructions. 401 decisions were appealed to courts. Out of them 102 were found completely valid, 5 – partially valid, 23 – invalid, 271 are still under appeal.

In 2011 there were received 391 applications on anti-competitive agreements (concerted actions) with participation of state authorities (Article 16). 54% of applications were submitted due to restriction of access to the market, exit from the market. 544 cases were initiated, including under the FAS Russia initiative. 486 cases were admitted as violations and 488

instructions were issued. Out of 95 appealed decisions the court found 13 decisions completely valid, 2 –invalid, and 80 are still under appeal.

With regard to non-observance of antimonopoly requirements to conduction of tenders on public procurement (Article 17) there were received 2192 applications. The majority of applications (702) deal with unjustified restriction of access to participation in tender (356), as well as with creation of beneficial conditions for participation in tender (303). 1065 cases were initiated. 304 cases were terminated due to elimination of violation during proceeding or non-confirmation of the fact of violation. On the rest of cases there were taken 834 decisions on admitting the violation and 393 instructions were issued. 116 decisions were appealed to court. Out of them the court found 29 decisions completely valid, 6- partially invalid, 10 – invalid, and 71 are still under appeal.

2.3.2 Summary of significant cases

Suppression of anti-competitive actions of state and local authorities and economic entities

1. The FAS Russia found the Federal Aviation Agency (Rosaviation) as violating Part 1 of Article 15 of the Law on Protection of Competition.

The FAS Russia got information about situation in “AK “TRANSAERO” OJSC by media. The aforementioned situation was connected with impossibility to carry out international irregular (charter) passenger and cargo transportation from Moscow to Rome, Milan, Venice in the winter timetable period 2011-2012, due to expulsion of air company from protocol for tolerance of charter flights on the routs Moscow-Rome, Moscow-Milan and Moscow-Venice.

“AK “TRANSAERO” OJSC repeatedly appealed to the Federal Agency of Air Transport, as a person granting access to air carriers holding a valid operator certificate and license on air passengers and cargo transportation. On the basis of new rules for international irregular (charter) passenger and cargo transportation the above mentioned routes, “AK “TRANSAERO” OJSC applied for getting access to international irregular (charter) passenger and cargo transportation from Moscow-Rome, Moscow-Milan, Moscow -Venice in the winter timetable period 2011-2012.

Nevertheless, Rosaviation did not consider any application from “AK “TRANSAERO” OJSC concerning access to international irregular (charter) passenger and cargo transportation in the winter timetable period 2011-2012.

Such actions of Rosaviation created possibility for “Aeroflot – Russian Airlines” OJSC (selected air carrier on the routes Moscow-Rome, Moscow-Milan and Moscow-Venice) to unilaterally affect general conditions in the product market which caused limitation of competition in the international air transportation market.

2. On 24.11.2011 the FAS Russia issued a decision on the case against “Saint-Petersburg International Mercantile Exchange, Ltd” for violation of Part 1 of Article 17 of the Law on Protection of Competition and a decision on the case against the non-profit partnership “Interregional Oil and Gas Industry Stock Exchange” on the signs of violation of Part 1 of Article 17 of the Law on Protection of Competition.

The cases were initiated on the grounds of results of unscheduled field checks conducted by the FAS Russia concerning compliance with the antimonopoly legislation by “SPIMEX, JSC” and the non-profit partnership “Interregional Oil and Gas Industry Stock Exchange” for the period from September 2010 to April 2011.

During the consideration of the above mentioned cases the FAS Russia’s Commission revealed that “Saint-Petersburg International Mercantile Exchange, Ltd” created advantageous conditions for bidders by means of the following ways:

- participation in the tender by creating conditions for transactions during tendering on the basis of counter-proposals filed by one bidder from automatized workstations (hereinafter - AWS) that were installed on the trading floor of “Saint-Petersburg International Mercantile Exchange, Ltd”.
- use of the software, hardware and technical means of electronic trading system (hereinafter - ETS) for tendering in oil section allowing the time oscillation in passing the application from the server access to the core ETS system during one trading session both in the greater and smaller side, which led to a breach of the sequence of registration of applications in the ETS.

“Saint-Petersburg International Mercantile Exchange, Ltd” violated the procedure of determination of the winners of the exchange trading by the following:

- registration of transactions on the basis of applications filed in the ETS after the trading session is closed;
- non-compliance with the verification procedure of presence of counter-proposals before they are entered to the request of offers procedures established by rules of “Saint-Petersburg International Mercantile Exchange, Ltd”.

The non-profit partnership “Interregional Oil and Gas Industry Stock Exchange” violated the procedure of determination of the winners of exchange trading rules established by the non-profit partnership "Interregional Oil and Gas Industry Stock Exchange " on registration of electronic transactions by the electronic trading system when there was a coincidence of prices of differently directed bids. Transactions were concluded at the best (highest) price of the buyer or seller.

It should be noted that the company “SPIMEX” OJSC and NP “MBNK” undertook actions aimed at preventing violations that were detected by the Commission of the FAS Russia.

Following consideration of these cases, the FAS Russia recognized that “SPIMEX” OJSC

violated Clauses 2 and 3 of Part 1 of Article 17 of the Law on Protection of Competition, whereas NP “MBNK” violated Clause 3 Part 1 Article 17 of the Law on Protection of Competition, and decided to discontinue the consideration of these cases in connection with the voluntary elimination by “SPIMEX” OJSC and NP “MBNK” of the violation of antimonopoly legislation.

The materials of these cases were used in the consideration of the “third wave” cases involving vertically integrated oil companies and when taking the decisions on violations of antimonopoly legislation.

3. The Department of Health of the Moscow Government violated Part 1 Article 17 of the Law on Protection of Competition, by having included trade names of drugs in the technical documentation of the Open Auction for the state contract to provide health facilities in Moscow with specific drugs and medical devices in 2008, that could limit the opportunity for businesses to participate in this auction and could lead to prevention, restriction or elimination of competition in the auction.

The Department of Health of the Moscow Government was instructed to terminate the violation of antimonopoly legislation and to perform the actions aimed at ensuring competition, namely at the formation of lots for the supply of drugs in the development of the auction documentation for an international non-patented name, except as provided by law.

2.4. Actions aimed at prevention of unfair competition

2.4.1. Description of activities of competition authorities and courts

In 2011, the total number of applications processed for the purposes of prevention and suppression of unfair competition (Article 14 of the Law on Protection of Competition) was 2070. 1065 cases were initiated. In 828 cases, the decision was made to recognize violations and 653 prescriptions were issued. Of all cases initiated in relation with the fact of unfair competition in product markets, 25% of cases were initiated in connection with the dissemination of false information, 19% of cases were initiated in connection with misrepresentation of consumers, 18% of cases were related to the sale of goods from the illegal use of intellectual property. 143 cases have been opened on grounds of suppression of unfair competition in the financial services markets.

In total 163 decisions taken by the FAS Russia in 2011 were appealed to a court. Courts recognized 39 decisions as fully legitimate, 10 were recognized as fully invalid, the remaining 114 decisions are currently under appeal.

2.4.2. Description of typical cases on unfair competition

1. On 09.06.2011, the FAS Russia in cooperation with the Autonomous Non-Profit Organization “Organizing Committee “Sochi 2014” established the fact of unfair competition in

the actions of “General Motors Daewoo Auto and Technology CIS,” LLC, for illegal use of the Olympic symbols in the sale of cars “CHEVROLET”. Upon the violation the Commission of the FAS Russia issued the prescription to terminate the violation to “General Motors Daewoo Auto and Technology CIS,” LLC.

The violation of the antimonopoly legislation “General Motors Daewoo Auto and Technology CIS,” LLC, expressed in the offer for sale and distribution on the territory of the Russian Federation through the authorized “Chevrolet” dealers with the body color «OLYMPIC WHITE».

The designation “OLYMPIC” is a protected verbal element of a combined trademark owned by the International Olympic Committee according to the international registration of 03.11.2009 No.1026243, registered for class 12 - “vehicles” of the International Classification of Goods and Services, which extends legal protection to the territory of the Russian Federation.

The FAS Russia's Commission found that the company “General Motors Daewoo Auto and Technology CIS,” LLC, did not conclude contracts for the use of the Olympic symbols with the International Olympic Committee and Autonomous Non-Profit Organization “The Organising Committee “Sochi 2014” and is not a partner or a sponsor of the XXII Olympic Winter Games and the XI Paralympic Winter Games 2014 in Sochi.

Such acts of unfair competition prohibited by Clause 4 of Part 1 of Article 14 of the Federal Law of 26.07.2006 No.135-FZ “On Protection of Competition”, and Clause 1 of Part 1 of Article 8 of the Federal Law of 01.12.2007 No.310-FZ “On Organizing and Holding the XXII Olympic Winter Games and the XI Paralympic Winter Games in Sochi in 2014, on Developing the City of Sochi as a Mountain Resort and Amending Certain Legislative Acts of the Russian Federation.”

The decision of the FAS Russia's Commission served as the basis for bringing “General Motors Daewoo Auto and Technology CIS,” LLC to administrative liability in accordance with Paragraph 2 of Article 14.33 of the Code of the Russian Federation on Administrative Violations, in the form of the turnover fine in the amount of more than 23 million rubles.

It should be noted that in accordance with the Agreement on the Basis of Interaction when Organizing the XXII Olympic Winter Games and the XI Paralympic Winter Games in Sochi in 2014 between the FAS Russia and the Sochi 2014 Organizing Committee on 05.08.2008, the joint Working Group was formed, which is a consultative body on the protection of Olympic and Paralympic symbols.

Therefore, the suppression of unfair competition by the FAS Russia in actions of “General Motors Daewoo Auto and Technology CIS,” LLC, is one of the most striking examples of interaction between the FAS Russia and Sochi 2014 Organizing Committee, pursuant to the

commitments taken by the Russian Federation for the protection of the Olympic and Paralympic symbols.

2. In 2011, the FAS Russia received 24 complaints from physical persons for unfair competition committed by a number of credit institutions when attracting funds of physical persons into deposits.

Some of these appeals served as the grounds for initiating cases for violating Part 1 of Article 14 of the Law on Protection of Competition by Uniastrum Bank (LLC), OJSC “Investtradebank” and JSC “SKB-Bank” in 2011.

In May 2010, OJSC “Investtradebank” stopped receiving additional payments under contracts of recurring term bank deposit “Perspektiva” concluded for a period of 732 days and 1097 days, despite the fact that under the terms of this contract this deposit is replaceable.

In 2010, JSC “SKB-Bank” introduced fees of 7% for additional cash payments under contracts of the replicable deposits “Patriot”, “Patriot!!!” and the “Gold Standard,” which grant the right to the depositor to replenish the deposit without restrictions during the term of the deposit.

In May 2010, Uniastrum Bank (LLC) introduced a fee of 7% for the transfer or withdrawal of cash from a checking account / deposit account on reporting “on demand” credited to them in a non-cash form from the account on reporting of term deposit.

Credit organizations have essentially worsened the conditions of deposits compared to the originally stated ones. These actions of the banks could inflict losses to banks-competitors which fulfill commitments conscientiously, as well as could undermine the confidence of depositors in the banking system as a whole.

Upon review of these cases the Joint Commission of the Central Bank of the Russian Federation and the FAS Russia has recognized Uniastrum Bank (LLC), OJSC “Investtradebank” and JSC “SKB-Bank” violated Part 1 of Article 14 of the Law on Protection of Competition and issued to credit institutions the instruction to terminate the violation of the antimonopoly legislation as well as to perform the actions aimed at ensuring competition.

3. The role of competition authorities in the formation and implementation of other policies

3.1. The Administrative Reform and Anti-Corruption

The FAS Russia undertakes actions aimed at improving performance of the competition authority's role in the implementation of the concept of reducing administrative barriers and improving accessibility of the public and municipal services for 2011-2013.

In 2011, FAS Russia carried out the following activities:

1. Optimization of the FAS Russia's activities. In 2011, the FAS Russia introduced the quality management system (ISO). The Federal Antimonopoly Service - the first of the federal bodies of executive power in Russia - is certified for compliance with requirements of the international quality of standard management ISO 9001-2008. Within the framework of preparation for the certification performance measures for each organizational unit have been developed; the rating is being conducted of the regional offices and departments of the central office.

2. The Working Group on optimizing the structure and functions of the federal bodies of executive power in the frameworks of the Commission of the Government of the Russian Federation on Administrative Reform. Based on the proposals of the Working Group chaired by the Head of the FAS Russia a comprehensive action plan has been developed to optimize the control, regulation and licensing functions, provision of public services as well as to reduce excessive government regulation in the field of health, transport, communications, environmental management, standardization and technical regulation, and to reduce excessive government regulation in the sphere of activities of the Ministry of Industry and Trade of Russia and the Ministry of Emergency of Russia.

3. The information policy of the FAS Russia. By issuing the Order of 11.07.2011 No.507, the FAS Russia approved the Regulation on Information Policy of the FAS Russia and its regional offices. The Regulation lists the information on the activities that are to be made public. In particular, this information is on the legislative activity, services provided by the FAS Russia, annual plans of inspections and their results, information about initiation of cases of violation of antimonopoly and other relevant legislation, copies of decisions and instructions, statistical data, texts of court decisions on cases involving the FAS Russia agencies market analysis.

4. Industry and civil society participation. In order to improve the efficiency of interaction with the civil society, to increase transparency of the FAS Russia, to monitor violations of antimonopoly legislation, including for corruption risks, the FAS Russia established the Public Advisory Council of the Federal Antimonopoly Service. The Council consists of representatives of the most powerful non-profit and business associations. It monitors the activity of FAS Russia, elaborates recommendations on improvement of competition legislation and practice on prevention of violations. Similar councils are also formed in the regional offices of the FAS Russia.

In order to attract professional market participants to meet the challenges of competition development in product markets, the FAS Russia established a series of the Expert Councils. In 2011, the number of the Expert Councils of the FAS Russia has increased to 25 (23 in the previous year). The Expert Council on developing competition in the field of water transport and

the Expert Council on developing competition in the distribution and maintenance of cars were created.

Besides, the non-commercial partnership «Promoting of competition development» that consolidates the leading lawyers who specialize in the Russian competition legislation as well as competition economists, continues its activity. At present the Partnership consists of 34 members that include lawyers and economists from the major Russian and international law companies.

3.2. Control over implementation of foreign investment in strategic sectors of the economy.

Within the frameworks of the application of the Federal Law of 29.04.2008 № 57-FZ "On Foreign Investments in strategic sectors of economy" in the 2011 FAS Russia has considered 81 applications of foreign investors. 52 of these applications were put to the consideration of the Government Commission for Control over Foreign Investments in the Russian Federation (hereinafter - Commission). Upon review of these applications the Commission adopted 49 decisions on preliminary approval of transactions (including 17 decisions on the condition of the agreement to ensure compliance with the obligations set by the Commission) and 3 decision to deny approval of transactions. 20 petitions were taken up directly to FAS Russia, within the designated jurisdiction, 8 applications were withdrawn by the applicants, an application was returned without consideration. Cases of judicial review of decisions taken by the Commission and the FAS Russia have not been initiated.

3.3. Participation in the regulation of international trade.

In 2011, FAS Russia's activities to ensure that competitive conditions in the application of tariff and nontariff regulation of international trade was carried out in the framework of the Sub-Commission on customs tariff and non-tariff regulation, protective measures in the international trade of the Governmental Commission on Economic Development and Integration (hereinafter - the Sub-Commission), and the Committee on Regulation of the international trade (hereinafter - Committee) established under the Customs Union Commission, in accordance with the decision of the Customs Union Commission on 27.01.2010 № 157, which is associated with the formation of the Customs Union of Belarus, Kazakhstan and the Russian Federation.

In 2011 within the frameworks of activity of the Sub-commission and the Committee the FAS Russia considered:

134 applications on adjustment of import and export duties, covering 106 product items of the commodity classification of the Customs Union international trade;

119 applications concerning the non-tariff adjustment and governing general issues of international trade, including regulation within the frameworks of the Customs Union.

In 2011, summarizing the major conclusions concerning tariff and non-tariff adjustments, the Sub-commission and the Committee had considered 71 decision and 4 Orders of the Government of the Russian Federation. All draft decisions mentioned above had passed through reconciliation procedure with the FAS Russia.

While preparing its decisions concerning general issues of international trade the FAS Russia reckoned that these measures shouldn't restrict competition conditions more than it is necessary to achieve the objectives for implementation or alteration of customs tariff and non-tariff regulation. Meanwhile, the FAS Russia took into consideration the competitive conditions at appropriate product markets, also stressed on the need to take into account the balance of interests of manufacturers and consumers and prevent groundless protection with the formulation of the relevant measures.

Assessment of the competitive conditions at appropriate product markets was carried out by the FAS Russia with the consideration of the delivery of goods of Belarusian and Kazakh manufacturers on the territory of the Russian federation.

Besides, due to complete realization of the Customs Union by authorized governmental authorities of allied members chargeable for investigations, which precede the implementation of special protective, antidumping and compensation measures, in 2011 there was a revision of active national protection measures of the internal market in order to evaluate the appropriateness of implementation of the given actions on the territory of the Custom Union so the new measures weren't introduced.

3.4 Participation of the FAS Russia in integration processes within the frameworks of the formation of the Common Economic Space of the Republic of Belarus, the Republic of Kazakhstan and the Russian Federation (CES)

In 2011, the FAS Russia paid special attention to the development of integration processes within the frameworks of the formation of CES, one of which was a key question concerning of the formation of supranational competition regulatory system.

The FAS Russia took a proactive role in the preparation of proposals of the Russian Federation concerning the structure, powers and functions of the supranational body of CES related to questions of competition system.

The Eurasian Economic Commission, established by the Treaty for the Eurasian Economic Commission dated 18.11.2011, was defined as the supranational body within the frameworks of CES, including the competition sphere.

The Eurasian Economic Commission (EEC), as provided for in the Agreement on Common Competition Principles and Rules dated 10.12.2012, is the authorized body monitoring common competition rules within the frameworks of CES.

EEC is the secular regulating authority of the Customs Union and the Common Economic Space of the Republic of Belarus, the Republic of Kazakhstan and the Russian Federation.

In accordance with the treaty, EEC is granted of authority in the following areas:

- Customs tariff and non-tariff regulation;
- Customs administration;
- Technical adjustment;
- Establishing trading regimes for third-party countries;
- Macroeconomic policy;
- Competition policy;
- Natural monopolies;
- State and (or) municipal procurement;
- Mutual trading of services and investments;
- Protection of results of the intellectual activity and means of individualization of production, work and services;
- Financial markets (banking area, insurance area, foreign exchange market, equity market);

and also in some other areas.

The major task of ECC in the area of competition policy is to create the common competition policy within the frameworks of CES for ensuring the free flow of goods, services and assets, the freedom of economic activity and the effective functioning of commodity markets on the united customs territory of member States of the Customs Union and the Common Economic Space.

The executive body of the Commission is the Board of the Commission; it consists of nine members – Ministers which ensure the implementation functions of the Commission in the certain areas.

The member of the Board – the Minister of competition and antimonopoly regulation ensures the implementation functions of the Commission in the areas of:

- Competition policy;
- Monitoring common competition rules (established by the Agreement on Common Competition Principles and Rules dated 10.12.2012);
- Price regulation;
- State and (or) municipal procurement.

The Member of the Board – Minister of Competition and Antimonopoly Regulation coordinates the work of the following departments of the Commission:

- Department of antimonopoly regulation;

- Department of Competition Policy and Control over State Procurement.

3.5 Additional measures aimed at advocacy of competition.

The FAS Russia continued the work on increasing the openness of its activity and perfecting its quality level on advocacy of competition. The FAS Russia carried out an effective cooperation and collaboration with business community and all-Russian alliances and associations of entrepreneurs (OPORA RUSSIA, RSPP, Delovaya Rossiya, Chamber of Commerce and Industry of the Russian Federation) within the frameworks the Public Advisory Council of 25 Experts Council on key markets.

The Order of the Government of the Russian Federation No. 1306-p on 28.07.2011 stated the creation of Methodological Training Centre of the FAS Russia (Kazan) for improving skills and retraining of the personnel on the major activities of the FAS Russia, this Center will become a platform for equal understanding of the norms of the antimonopoly legislation, the legislation on advertising and control over state procurement for the purpose of competition authorities efficiency enhancement.

In 2011 it was prepared and published a textbook for University students “The Competition Law of Russia” edited by Mr. Igor Artemiev, the Head of the FAS Russia, a merited economist of the Russian Federation, and by Mr. Aleksey Sushkevich, Ph.D. in Economics, the Head of the Analytical Department of the FAS Russia, a merited economist of the Russian Federation. The textbook “The Competition Law of Russia” is recommended to use as one of the methodological component for the establishment of profile departments in colleges and universities.

In 2011, the FAS Russia established electronic theoretical and practical journal “Russian competition law and economy”. This publication is directed to the advocacy of competition, initiation of researches in the area of legal protection of competition and functioning of commodity markets, and also for the promotion of objectives, the strategy and the implementation of state policy towards protection of the competition, clarification of the functions of competition authorities in protection of competition. This Journal has the most significant interest as a tool for disseminating experiences of competition authorities.

4. Resources of competition authority

4.1 Resources overall (current numbers and changes over previous year):

4.1.1 Annual budget

In 2011 the annual budget of the competition authority (the FAS Russia) amounted to 2'276'761'800 rubles (approximately 75'892'060 million USD). The growth compared to 2010 amounted to 488'510'300 rubles (approximately 16'283'677 million USD).

4.1.2 Number of employees (person-years)

On 31.12.2011 the actual number of staff of the FAS Russia was 3079 persons in all the system of the FAS Russia. Out of them 592 persons work in the Central Office of the FAS Russia located in Moscow, 2487 person work in Regional Offices of the FAS Russia located in 82 regions of the Russian Federation.

Out of total number of employees (1968) there are:

«lawyers» – 1151 persons;

«economists» - 556 persons;

«other professionals» - 261 persons (people having technical and other education, as well as incomplete higher education);

435 employees have legal and economic education;

49 employees of the FAS Russia have an academic degree in economics.

4.2 Period covered by the above information

From January 1, 2011 till January 1, 2012.

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