

# Press-release of 21.06.2010

21 июня 2010, 18:16

On 9th June 2010 in Suzdal FAS Russia held a Round Table with Italian Competition Authority on developing competition in the oil product markets. The venue was organized as part of the extended FAS Russia Collegium dedicated to the 20th anniversary of Russian antimonopoly bodies.

Robust efforts to curtail violations by monopolists on oil products markets is a widespread international and EU practice, said Alexandro Noce, Director of the Department for Control over the Energy Industry of the Italian Competition Authority (ICA) at the Round Table. For example, in 2006 Italy fined oil companies over 300 million euro for engaging in a competition-restricting agreement (ENI - 117, Exxon- 66.7, Kuwait- 46.8, Shell - 56.5, Tamoil - 19.6 and Total - 8.9 million euro accordingly). Legitimacy of this decision was confirmed by the Italian supreme judicial authority. In his turn, Deputy Head of FAS Russia Anatoly Golomolzin said that Russia applies similar sanctions for violations on such markets. For anticompetitive actions oil companies in Russia were fined in total 26 billion Rubles.

Anatoly Golomolzin made a presentation about the problems associated with oil products markets in Russia. Presentations were also given by the Director of the Department for Control over Electric Power Industry of the Italian Competition Authority (ICA), Alexandro Noce, the Head of the Sverdlovsk OFAS Russia, Tatiana Kolotova, and a member of "Promoting Competition in CIS" Non-Commercial Partnership, Anna Noumerova. They gave examples of antimonopoly cases on the market of oil products and discussed measures adopted by the antimonopoly authorities to eliminate the violations.

Alexandro Noce talked about an important case investigated by ICA on the market of aviation fuel. The case was opened in 2004 and the final decision was made in 2006. As in Russia, Italian aviation fuel market has an oligopolistic structure: ENI controls 43-45%, Exxon - 16-18% Total - 15-17%, Tamoil - 9-11%, Kuwait - 6-8%, Shell - 5-7%. Two major cities - Milano and Rome consume over 70% of aviation fuel. (In Russia over 75% of the products are consumed by the Moscow aviation node). The situation is made more complex due to structural relations within joint enterprises of vertically-integrated oil companies in the airport fuel-and-refueling complexes. Investigating the case, ICA established that the major market players entered into a competition-restricting agreement. The companies refused to compete with each other at the tenders, organized by airlines; established monitoring and control over their market shares; restricted market entry of new competitors, refusing access to storage facilities; established continuous information exchange between the companies and exercised other anticompetitive actions.

Based on the outcome of the investigation, ICA fined oil companies over 300 million euro, in particular: ENI -117 million euro, Exxon- 66.7, Kuwait- 46.8, Shell - 56.5, Tamoil - 19.6 and Total - 8.9 million euro. Both first and second (final) instances of the Italian Administrative Tribunal confirmed legitimacy and reasonableness of the ICA decision and the size of the fines.

The Russian antimonopoly authority also shared experience in this field. "In 4Q 2007 - the first six months of 2008 four major oil companies were fixing monopolistically high prices on the

wholesale markets of oil products", said Mr. Golomolzin. "Having investigated the case, FAS Russia imposed fines upon the vertically integrated oil companies, the size of which exceeded 5.4 billion Rubles.

We were hoping that the series of antimonopoly cases would force vertically integrated oil companies to change their conduct, but some companies formed additional units to fight with FAS. As a result, we got a second "wave" of cases, and in 2009 the size of the fine for antimonopoly violations was increased by more than four times and overall reached over 26 billion Rubles".

On 20th May 2010, the Presidium of the Supreme Arbitration Court of the Russian Federation pronounced legitimacy and reasonableness of the FAS Russia's decision and determination on the case against "TNK-BP". "This ruling is of principal importance. In this case, the highest court instance formalized applications of new statutes of the antimonopoly law: the concept of collective market dominance and heavy "turnover" fines. It undoubtedly makes a precedent and is important for future judicial practice", pointed out Mr. Golomolzin.

Anatoly Golomolzin also said that by introducing turnover fines and criminal sanctions Russia is following the path that the USA took half of a century ago. A principal stand of the law-makers and courts in the USA forced big companies to drastically cut down violations of the antimonopoly law, and in most cases entirely avoid such conduct.

At the Round Table Mr. Golomolzin described the state of competition on the market in question. "The market of oil products is monopolized", he said. "Four vertically integrated oil companies - "Gazprom Neft" OJSC, "TNK-BP" OJSC, "Rosneft" Oil Company" OJSC and "Lukoil" OJSC - have collective dominance on Russian market of motor petrol". In Russia there are 28 large oil refineries where Russian oil is processed into oil products has and Italy 17. Russia fully satisfies demand of refineries with domestic oil, while Italy is an oil importer. Approximately 50% of oil products, mostly low quality, are exported: 80% of fuel oil, 60% of diesel fuel, 15-20 % of petrol and 20-25% of aviation fuel.

Alexandro Noce pointed out that Italy imports 75% of the oil consumed within the country, oil refining takes place in 17 oil refineries, which are mostly controlled by Italian or foreign vertically-integrated oil companies. Independent refining constitutes less than 20%. Italy exports 26% of all produced oil products, mostly high-quality motor petrol and diesel fuel (65% of the total export of oil products).

To a considerable extent, domestic wholesale prices in Italy are determined by the prices for oil and oil products on global markets. Accordingly, domestic prices are adjusted in line with quotations on external markets under the formulae "Plats+".

Participants of the Round Table pointed out that when prices increased on global markets, they also increase in national markets. When prices on world markets go down, there is some lag before domestic prices start decreasing, but it does not exceed a week. In this connection, it was concluded that outrunning growth of domestic prices immediately following increases of prices on external market and a 1.5 or 2-month lag for the reduction of prices on domestic markets after prices went down on external markets it's a result of collective dominance of the main Russian vertically integrated companies and abusing market dominance by them.

FAS Russia informed Italian colleagues about its proposals for developing an internal price indicator based on exchange and intra-exchange price quotations, and also proposals about introducing Net Back price formulae.

According to assessments of ICA experts, the motor fuel market has preconditions for concerted actions between its participants: pronounced price overlapping between eight vertically-integrated oil companies, high margin from sales of petrol and diesel fuel, information exchange between the companies about daily proposals for the next day price changes. To prevent antimonopoly violations, ICA set several requirements to the vertically-integrated oil companies - conduct-related (exchanging information) and structural (creating conditions for developing competition on the Italian market).

On the retail market special requirements are put forward for ENI, whose share has exceeded 30 %: in the past three years. ICA requires that at the company's service stations providing the full package of services, prices should not be higher than the average prices in the EU by more than 7 eurocents, and at 3000 petrol stations that have a pre-payment system and self-service, prices should not exceed the average in the EU and be at least 5 eurocents lower than at the service stations offering the full package of service.

An important factor of competition is the right of independent Italian companies for access to oil products directly from refineries at the same conditions that are established for the companies affiliated with the owners of oil refineries. In the Russian Federation this right can be ensured in accordance with the FAS Russia's determinations issued on antimonopoly case but only upon completing judicial procedures with regard to vertically-integrated oil companies.

Italian law obligated vertically-integrated oil companies to provide independent market participants non-discriminatory access to logistic networks and fuel storage facilities. In Russia obligations to provide such are established by FAS Russia's determinations with conduct requirements issued to vertically-integrated oil companies as part of the FAS Russia's control over large mergers and acquisitions. Currently legal regulations exist only for the aviation fuel market: the Rules for non-discriminatory access to airport services, adopted by the Government of the Russian Federation. The problem can be comprehensively resolved by adopting the "third antimonopoly package", which will regulate proceeding for non-discriminatory access not only to natural monopolies but also to essential facilities.

Anatoly Golomolzin stated that the main antimonopoly violations are abusing market dominance, particularly, fixing monopolistically high prices and discriminatory pricing; FAS also exposed considerable number of price collusions on regional markets. FAS Russia's representatives talked about their practice of investigating cases on regional markets, in particular, investigations of concerted practice aimed at increasing and FAS Russia's representatives also talked about their practice of investigating cases on regional markets, in particular, investigations of concerted practice aimed at increasing and maintaining prices (using examples of the Yekaterinburg and Tomsk regions).

FAS Russia also described measures undertaken to stabilize the situation on the markets of aviation fuel and refueling services. FAS investigated several cases against larger airports of federal status. Following the FAS Russia's proposals, the Government of the Russian Federation

liberalized domestic air transportation market and adopted the Rules for non-discriminatory access to airport services.

As a result of the antimonopoly measures and pivotal institutional changes, passenger traffic has not only exceeded the level of 2009 by 35%, but also the level of - 2008 the best year- by 3-5%. As emphasized by Mr. Golomolzin, it is not a coincidence that IATA has recommended to circulate the experience of the Russian Federation within the International Competition Network.

Summing up the meeting, the parties outlined further prospects of developing cooperation in the field of competition policy.