



**Asia-Pacific  
Economic Cooperation**

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Agenda Item: 8

## **Competition Law and Policy in the Russia: Recent Developments**

Purpose: Information

Submitted by: Russian Federation



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## FEDERAL ANTIMONOPOLY SERVICE

### Competition Law and Policy in the Russia: Recent Developments

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## FAS Russia – Multifunctional Authority

### Powers

- Prosecution of violations of competition law by **private and government** bodies;
- Public procurement (government bodies and state-owned companies);
- Control over natural monopolies and regulated utilities;
- Advertising;
- Foreign investments into the strategic economic sectors;
- Competitive bidding for allocating property, resources, rights.

### Functions

- supervision;
- investigation;
- detection of violation;
- decision-making;
- imposition of remedies;
- control;
- courts.

## Changes in Legislation and Enforcement

Introduction of the first, second and third “antimonopoly packages” in 2006 - 2012 resulted in changes in treatment of:

- **Cartels and horizontal agreements**
- **Unilateral abuses and vertical agreements**
- **Merger review**
- **Sanctions and remedies**
- **Procedures**
- **Powers to cease and desist antitrust violations and acts restricting competition by other federal and regional government bodies**
- **Regulation of natural monopolies**
- **International cooperation in competition law enforcement and harmonization**
- **Agency transparency and effectiveness effectiveness**

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## Anti-Cartel Provisions



- Cartel was defined as horizontal agreement aimed at or/and resulting in one or several of the following:
  - price fixing;
  - bid-rigging;
  - market allocation;
  - concerted supply limitation or termination;
  - boycott/collective refusal to deal.
- Agreements in one group of persons (e.g. holding company) are not prohibited;
- Joint activity on the base of horizontal agreements (joint venture) may be considered admissible if it does not fall into the definition/criteria of cartel.

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## Unilateral practices and vertical agreements

All agreements except cartels are treated on the “rule of reason” principle/effect based approach

- “Safe harbor” for vertical agreements: 20% combined market share, not more than 8 % of each participant;
- Block exemptions issued by Government;
- Resale price maintenance is treated on the effect based approach.

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## Merger review and authorization

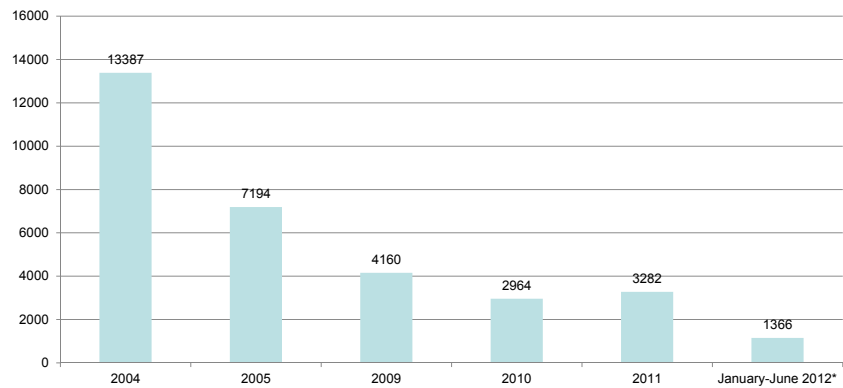
**Control over economic concentration should not create excessive administrative burden on business:**

- High thresholds:
  - total amount of assets – 233 million USD;
  - total amount of revenues – 333 million USD.
- Two-stage control scheme;
- Post-merger notification procedure for transactions in one group of persons (e.g. holding);
- Regulation of control procedures is specified directly in the Law on Protection of Competition;
- Disclosure of information about the final beneficiary of the transaction is obligatory.

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## Merger review: reduction of regulatory burden

**Result – an effective reduction of quantity of transactions and actions that are subject to approval by competition authority**



Statistics for the period of Jan.-June 2012 is approximate

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## Procedural changes: Injunction mechanism



**Injunction** – a new instrument of competition enforcement aiming at elimination of violation and its causes without initiation of a case.

Injunction is a request to terminate a violation of antimonopoly legislation in case of imposition of non-favorable contract terms or any unjustified refusal or rejection to deal).

Initiation of a case without issuing of an injunction is not allowed.

Number of injunctions issued– 603; 74% of them are complied to.

Compliance with an injunction releases from the administrative liability.

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## Control over Public Authorities

### Growth in the number of violations by the Public Authorities:

- creation of barriers to business;
- conclusion of anticompetitive agreements with economic entities;
- introduction of unreasonable fees for provided state services;
- provision of unjustified preferences.



### System measures:

- Increase of personal administrative liability (disqualification) for the officials violating competition rules;
- Government commission on administrative reform.

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## Regulation of natural monopolies

### Natural monopolies: legal environment and prospective developments

Regulation:

The Federal Law "On Natural Monopolies" (1995)

The Federal Law "On Protection of Competition" (the 2012 edition)



The Law on natural monopolies has fulfilled its major role.

The next step is the transition from tariff regulation to antimonopoly regulation.

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## Natural monopolies regulation

### Rules for non-discriminatory access

#### Adopted:

- services of railway infrastructure;
- airport services;
- services of oil and oil products transportation;
- in the electricity sector.



#### Drafted:

- telecommunications;
- postal services;
- harbor services, inland waterways infrastructure and transport terminals.



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## Natural monopolies regulation



### Standards of information disclosure

The FAS Russia developed Forms, timeline, frequency of disclosure of information by subjects of natural monopolies, as well as rules for filling such forms:

- services of oil and oil products transportation through pipelines;
- services of transport terminals, ports, airports;
- infrastructural services of water ways;
- railway transportation services.

### Procurement rules and transparency

The Federal Law № 223-FZ “On procurement of goods, works, services for specific types of legal entities” – general principles and major requirements for procurement of goods, works and services (inclusive to natural monopolies):

*transparency, fairness, objective and effective funds spending, measurability of requirements towards tender participants.*

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## Enforcement on the Cross-Border Markets

### Cooperation within the CIS

- Interstate Agreement on Antimonopoly Policy Coordination (1993)

- The Interstate Council for Antimonopoly Policy (ICAP) was founded in 1993



– is a basic forum for cooperation between the national competition authorities of the CIS countries

- Harmonizing national competition laws of the CIS member-states;
- Coordinating approaches to various regulatory aspects;
- Enhancing cooperation between the antimonopoly bodies of the CIS member-states in investigations of cross-border violations.

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## Enforcement on the Cross-Border Markets

### Joint investigations within the CIS

The Headquarters for Joint Investigations was established in 2006 by the Decision of the ICAP members:

#### Establishment purposes:

Joint investigations of violations of the antimonopoly legislation in socially important and infrastructural markets, which successful functioning directly affects welfare of the CIS citizens and promotes integration of the CIS member-states.



Investigations on the markets of air transportation, telecommunications, grain, food products, pharmaceuticals, electric power energy, oil and oil products.

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## Enforcement in Cross-Border Markets

- **Agreement on the common competition principles and rules** of October 9, 2010 (entered into force on January 1, 2012)
- **Agreement on Eurasian Economic Commission (EEC)** - a united permanent regulator of the Customs Union (CU) and the Common Economic Space in several spheres of activity, including competition policy.



**Establishing supra-national institution for protecting competition within the Common Economic Space of the Republic of Belarus, the Republic of Kazakhstan and the Russian Federation (since February 2012)**

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## Increase of agency transparency



- Governmental Commission on Competition and SME Development
- Counseling office (2011 – more than 16 000 applications);
- Administrative Regulations on information policy indicates the list of information open for access;
- Official web-site [www.fas.gov.ru](http://www.fas.gov.ru) - news and documents are published within 2 days; up to date news and documents;
- Representation in blogs and social networks (Facebook, Twitter, Livejournal) – more than 11 000 readers;
- Annual reports of the FAS Russia;
- 28 Expert Councils;
- E-journal “Russian Competition Law and Economics”
- Annual Russian Competition Day.

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## Improving Management Quality



The FAS Russia is the first federal executive body in Russia to be awarded an ISO 9001:2008 Certificate - an international quality management standard.

The ISO standard includes the following main principles:

- A process approach to management;
- Drive for results, and specific performance indicators;
- Consumer focus;
- Special attention to the human resources policy and qualification advancement.

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## Improving Management Quality



Continuous training of FAS Russia's officers is one of the priorities in achieving the target goals.

**Opening the Training Center of the FAS Russia in Kazan**

is a very important step in this direction.

Training Centre of the FAS Russia was established according to the Resolution of the Government of the Russian Federation №1306-p of 28.07.2011.

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## THANK YOU!



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