

Competition Policy

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The MAP Russia *conducts* the state policy *and control* with respect to:

- prevention, restriction and suppression of monopolistic activities, unfair competition on commodity and financial markets;
- support to entrepreneurship;
- ensuring control of compliance with the legislation of the Russian Federation on:
 - consumers' protection rights,
 - on advertisement;
 - on natural monopolies on respect of communication and commodity exchanges.

These tasks implementation is to provide effective operation of the Russian commodity and financial markets, balance of producers' and consumers' interest protection, promote for the solid economy development *in general*. Currently MAP Russia is in charge of 75 Regional Offices acting in 88 subjects of the Russian Federation. Regional Offices are governed only by MAP Russia providing for the unity of the legal regulation of the issues related to competition within the territory of the Russian Federation.

The traditional functions immanent for practically all antimonopoly authorities of the world are among the most essential in the policy of MAP of Russia. These functions include: suppression of abuses by the companies dominating on market, prohibition of anticompetitive agreements (conceited practice) of economic entities and economic concentration control on a market. Besides, the primary tasks of antimonopoly control are to reveal and to suppress in an expeditious manner the acts adopted and actions undertaken by the authorities: the federal bodies of executive power, bodies of executive power of the subjects of the Russian Federation and local self governments restricting competition as well as legal mechanisms improvement for elimination of administrative barriers, increase the liability for *the said* violations.

At present time the main difficulties that MAP Russia faced, while executing competition policy, are the insufficient investigative powers.

Legislation Development. A substantial volume of work was done in respect of improvement of antimonopoly legislation, systematic ensuring antimonopoly bodies activity. Major trends of this work included the following elaboration of draft legislation within the scope of competition law, improvement of applicable legislation, *aimed*, among other purposes, *at* bringing *this* law in line with economic *realities*, as well as liquidating the gaps and contradictions.

The important *result of the Ministry's work in respect of improvement of legal frameworks in 2002* was the adoption of the Federal Law of 09.10.2002 № 122-FZ «On Introduction of Amendments to the RSFRR Law “On Competition and Restriction of Monopolistic Activity on Commodity Markets” (hereinafter – the “Competition Law”), providing for:

- enforcing the control over the acts and actions restricting competition adopted by the Federal Executive Bodies, State Executive Bodies of the Subjects of the Russian Federation, local authorities, other bodies or organizations entrusted with functions of the authority of the above mentioned bodies, providing for the extending the scope of application of antimonopoly legislation;
- introduction of principally new definition for monopolistically high price, facilitating proof possibility for such kind of violation;
- creating of a new effective notification and suppression system of creating discriminative conditions of business: specified a conceptual apparatus, antimonopoly bodies authorized to issue mandatory for implementation orders to comply with the economic, technical, informational and other requirements ensuring discrimination liquidation of economic entities;
- introducing controlling functions for the public procurement tenders;
- introduction of prior public control over conclusion of anticompetitive agreements of economic entities;
- increase of thresholds of an aggregate value of assets belonging to economic entities in cases of mandatory approval of transactions and other actions of economic entities by antimonopoly bodies in compliance with the articles 17, 18 of Competition Law;
- optimization of the antimonopoly control system over economic concentration, which is directed, on the one hand, at taking measures for non-admission of unfounded origin or strengthening of the dominant position of the economic entities on the commodity and financial services' markets, and, on the other hand supports valid concentration, that provides steadiness of the Russian enterprises and the competitiveness of their products on the world market.

A new Administrative Code of the Russian Federation entered into force since July 1, 2002, extending and providing for more severe liability measures, for antimonopoly legislation violation inclusive.

In 2002-2003 the new tasks have being promoted for natural monopoly sector operation of the national economy, that poses additional tasks for the public competition policy. A package of draft legislation on railway transportation reform was adopted, legally defined trends for competition development in electro energetic sector, and elaborated draft development Concept of gas market. Reconstruction of natural monopoly sectors *is designed for* the transition from ineffective and barely transparent system of the state regulation of price formation and financial policy in this sector to market mechanisms of *ensuring* competition of designated enterprises and balance of interest among the producers and consumers.

The draft of the federal law "On the introduction of the amendments to the articles 12, 17 and 18 to the federal law "On competition and restriction of the monopolistic activities on the commodity markets" (the Draft and the Law "On competition" or the Law № 948-1) is aimed at liquidation of the excessive functions/powers of the federal agencies, at the increase in the efficiency of the state antimonopoly control, and also at the increase in the efficiency of the state antimonopoly regulation as a whole.

This Draft contemplates the increase of the thresholds for the total balance value of assets of economic entities, whose bargains and other actions cannot be made without preliminary authorization of the antimonopoly agency, according to the articles 17 and 18 of the Law "On competition", to the amount of 30 millions of the minimum salary rate (3 billions of roubles).

At present, according to Law № 948-1, the amount of the threshold comes to 300 minimum salary rate (30 millions of roubles).

The adoption of the mentioned changes entails the decrease in quantity of the economic entities' petitions. Also the Draft stipulates the exclusion of the point 10 of the article 12 of the Law "On competition", which empowers antimonopoly agency to register the economic entities, whose market share exceeds 35%.

Results of the MAP Russia activities for 2002

In the year 2002 antimonopoly bodies received 3,459 applications connected with *abuse by market participants of their dominant position* on commodities market. More than two thirds of the applications were connected with abuse of dominant position on the markets of basic branches of economy, such as electric and heat energy market, gas, oil and oil products, communications services, railroad transport, maritime and river transport and activities of maritime and river port terminals, automobile and air transport and activities of airports. More than a half of them refers to abuse of dominant position from the part of natural monopolies in the sphere of electric and heat energy, 20% are in the sphere of communications. The number of applications on violations of the Article 5 (abuse by market participants of dominant position) grew also in the spheres of gas, maritime and river transport and activities of maritime and river port terminals, in the sphere of automobile transport, which indicates that level of monopolistic activities in these fields does not decrease.

The most common violations of the Article 5 are, as in the last year, imposing of disadvantageous contractual terms and conditions and violation of the established pricing procedures. The number of applications connected with extraction of goods from the market in order to preserve deficit, establishment of encumbrances to access to the market, setting monopoly low prices, increased. The number of applications connected with setting monopoly high prices decreased.

The state *regulation of economic concentration* is one of the main conditions for the functioning of market economy, assurance of its stableness and national security. The main goal of conducting control over economic concentration is to reveal, prevent and suppress the excess concentration of market strength of the separate market participants (group of persons) that are not justified and not supported by a positive economic effect, decreasing the level of competition on a certain market. Results of the economic concentration control show the necessity of continuation in the Russian economy of processes redistribution of markets between enterprises (groups) possessing a significant or dominant share of private property. In 2002 over 24,000 applications and notifications relating to creation, reorganization and liquidation of enterprises, unions and associations of manufacturers, acquisition of shares (shares of participation) in the charter capitals of enterprises, etc. (articles 17, 18 of the Law on Competition) were considered, which is 14% more than it was in 2001. At the same time, it is worth noting, that in 2002, the quantity of applications and notifications relating to creation, reorganization, liquidation of commercial and non-commercial organizations decreased. That might be a result of the increase twice of the limits of antimonopoly control estimated on the basis of balance value of assets. The increase of the limits of antimonopoly control did not yet make an influence on the quantity of applications and notifications relating to acquisition of shares (shares of participation) in the charter capital and in other cases. In 2002 this process continued to expand, together with the noted growth of activity of foreign investors.

Norms of antimonopoly control over acts and actions, agreements (coordinated actions) of bodies of executive power and bodies of local self-government are provided by the Articles 7 and 8 of the Law "On Competition". Results of work of antimonopoly bodies for 2002 show that as opposed to market participants, bodies of executive power and bodies of local self-government extended their anti-competition activities which remains to be a sufficient brake for development of competitive relations.

Anticompetitive activities of bodies of executive power and bodies of local self-government are hinder to solve tasks of strengthening the state power, establishment of single economic and legal space, ensuring of the economic freedom of entrepreneurship. Irregularity of economic development of regions, different levels of investment attractiveness and a number of other circumstances should be brought to the reasons for existence of administrative barriers on regional level. This influences regional bodies of executive power and bodies of local self-government to solve economic tasks by illegal introduction of bans for goods circulation, restriction of freedom of entrepreneurship, creation of advantages for market participants of their region, which affects negatively on satisfaction of needs and preservation of single economic space. A number of violations of antimonopoly legislation by the federal bodies of executive power is caused by a lack of legal regulation of control (observation) functions imposed on them. Cases of excessive authorities as well as interruption of spheres in which the federal bodies of executive power carry out control (observation) are not rare, which leads to increase of administrative barriers, which become an unreasonably hard burden for market participants and frequently result in practical inability for them to carry out their economic activities.

In 2002 the antimonopoly bodies considered more than 2 500 application on violations of antimonopoly legislation by Regional Offices by adopting acts, taking actions restricting competition. The number of applications regarding anticompetitive actions of bodies of executive power of the subjects of the Russian Federation and bodies of local self-government are decreased in 28% comparatively to the year 2001.