COMPETITION ENFORCEMENT AGENCIES

HANDBOOK 2019

Published in association with:

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ELIG Gürkaynak Attorneys-at-Law

Lapidot, Melchior, Abramovich & Co

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GCR INSIGHT

Competition Enforcement Agencies Handbook 2019

A Global Competition Review Special Report

This article was first published in May 2019

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Competition Enforcement Agencies Handbook 2019

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ISBN: 978-1-83862-222-0

Printed and distributed by Encompass Print Solutions
Tel: 0844 248 0112

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Global Competition Review's 2019 edition of the *Competition Enforcement Agencies Handbook* provides full contact details for competition agencies in over 100 jurisdictions, together with charts showing their structure and a Q&A explaining their funding and powers. The information has been provided by the agencies themselves and by a panel of specialist local contributors.

The *Competition Enforcement Agencies Handbook* is part of the *Global Competition Review* subscription service, which also includes online community and case news, enforcer interviews and rankings, bar surveys, data tools and more.

We would like to thank all those who have worked on the research and production of this publication: the enforcement agencies and our external contributors.

The information listed is correct as of April 2019.

Global Competition Review
London
April 2019

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Questions and answers

How long is the head of agency's term of office?
The head of the Federal Antimonopoly Service (the FAS), the state secretary-deputy head and the deputy heads are appointed or released by the resolution of the government of the Russian Federation. Igor Artemiev, head of the FAS, was appointed in March 2004. The duration of employment of the head of the FAS is not limited.

When is he or she due for reappointment?
There is no reappointment limitation or other specific rules for the head of the FAS's reappointment.

Which posts within the organisation are political appointments?

The head of the FAS, the state secretary-deputy head and the deputy heads of the FAS are appointed or released by the resolution of the government.

What is the agency's annual budget?

In 2018, the budget of the FAS was 4.3 billion roubles.

How many staff are employed by the agency?

In 2018, there are 3,504 members of staff at the FAS, including 1,189 officers in the Central Office and 2,315 officers in 84 Regional Offices of the FAS.

To whom does the head of the agency report?

The FAS reports directly to the government of the Russian Federation. Coordination of the FAS's activity is implemented by the First Vice Chairman of the government, Mr Anton Siluanov.

Do any industry-specific regulators have competition powers? If so, how do these relate to your agency's role?

No. The FAS is the only regulator with competition law enforcement powers. It implements antimonopoly control over all industries and sectors of the economy without any exceptions.

Moreover, the FAS exercises control over

- compliance with the legislation on advertising, trade, foreign investments into strategic enterprises, public procurement, for example in the sphere of defence and security, control over state aid granting, anticompetitive actions of state authorities, as well as regulates tariffs (state control in the area of price (tariffs, additional charges, rates) regulation;
- the opening and maintenance of the federal data register of last resort providers and areas of their operation; and
- the opening and maintenance of the Data register of natural monopolies under the state regulation and control).

Areas of tariff regulation include heat supply; truck pipeline oil transportation; pipeline gas transmission; railway services; transport terminal, port and airport services; public electric and postal communications services; electricity transmission services; electricity industry operative-dispatch management services; heat power transmission services; inland waterway infrastructure's utilization services; radioactive waste disposal services; and water supply and drainage services.

All FAS public servants are involved in competition advocacy, that is, in interaction with other state authorities.

In 2018, the FAS successfully performed all the entrusted functions.

May politicians overrule or disregard authority's decisions? If they have ever exercised this right, describe the most recent example.

No. The government nor any politicians have the power to overrule or disregard authority's decisions. Decisions and prescriptions of the antimonopoly body may be appealed in court (for claims made by individuals and officials) or a commercial court (for claims in the field of business and other economic activity by way of consideration of economic disputes and other cases referred to their competence by the Arbitration Procedure Code and by other federal laws, based on the rules established by the legislation on legal proceedings in arbitration courts), within three months from the date of decision-making or issue of a prescription.

There has not been any case of challenging the FAS's decisions at the claim of the government of the Russian Federation.

Does the law allow non-competition aims to be considered when your agency takes decisions?

In accordance with article 1 of the Federal Law on Protection of Competition the aims of the antimonopoly regulation are:

- securing the unity of the economic area;
- the free movement of goods;
- freedom of economic activity;
- the protection of competition; and
- establishing conditions for effective functioning of the product markets.

These are the aims the FAS is guided by when making decision.

Which body hears appeals against the agency's decisions? Is there any form of judicial review beyond that mentioned above? If so, which body conducts this? Has any competition decision by the agency been overturned?

Decisions of the FAS can be appealed in courts for three months from the date the decision was made.

Since 4 January 2016 (the date amendments of 'fourth antimonopoly package' came into force) in some cases decisions of the Regional Offices can be appealed to a collegial body of the FAS. In accordance with article 52 of the Law on Protection of Competition,

in case decision or determination of the Regional Office is appealed to collegial body of the FAS, acts determined with regard to the case on violation of antimonopoly legislation can be appealed to an arbitration court within one month from the moment when decision of the collegial body of the FAS came into force.

All decisions adopted by the court on appealed cases are published on the official website of the FAS. In accordance with the Arbitration Procedure Code, the Supreme Court has the power to review decisions taken by courts of lower instances.

In August 2014, the Supreme Court became the only supreme judicial body for civil, criminal and administrative cases, as well as economic disputes.

Previously, the Supreme Arbitration Court was able to consider economic disputes, but now such cases are carried out by a panel of judges on economic disputes of the Supreme Court, comprising 30 judges.

The panel of judges is the second cassation instance on economic disputes. First, the cassation claim is considered by one Supreme Court judge personally, and then he or she makes a decision as to whether it is necessary to forward this claim to the panel of judges.

The decision of the panel of judges can be appealed to the Presidium of the Supreme Court. Supervisory and cassation claims are considered by one Supreme Court judge and then forwarded, if necessary, to the Presidium of the Supreme Court (Federal Law of 28 June 2014 No. 186 FZ 'On Making Amendments to the Arbitration Procedure Code of the Russian Federation'). On 14 October 2010, the Supreme Commercial (Arbitration) Court adopted Resolution No. 52, which introduced amendments to its 30 June 2008 Resolution No. 30 'On some questions arising during enforcement antimonopoly legislation by arbitration courts', aimed at the specification of certain provisions for the purpose of ensuring a common judicial approach during the consideration of cases on antimonopoly violations. It was kept in force.

The Constitutional Court is responsible for considering issues regarding the conformity of standards of the legislation of the Russian Federation to the Constitution. For the entire existence of the FAS, there have been five cases related to the Constitutional Court.

In 2018, thanks to the development of the system of warnings, antimonopoly compliance and a number of other changes in competition legislation, including the launch of the National Competition Development Plan for 2018–2020, the number of cases brought by the FAS continued to decline: with 3,223 cases being initiated (in 2015, 9,092 cases were initiated, in 2016, 4,040 cases and in 2017, 3,534 cases), with 2,486 decisions being made on the existence of a violation. Of them, 1,184 were appealed to the court (47.6 per cent); and 132 were declared invalid by the court (11.2 per cent).

Has the authority ever blocked a proposed merger? If yes, please provide the most recent instances.

For 2018, 1,086 pre-merger and 189 post-merger notifications were submitted to the FAS. Of these, 30 pre-merger notifications were blocked.

In accordance with the Federal Law on Protection of Competition, the merger control requirements only apply to the following transactions:

- acquisition of voting shares and participatory interests in joint-stock companies and limited liability companies respectively;
- acquisition of rights in respect of a legal entity;
- transfer of assets;
- establishment of a legal entity;
- corporate restructurings in the form of merger or accession; and
- entrance into a joint venture agreement. (In January 2016, the fourth antimonopoly package came into force. The competition law regulates entrance into joint venture agreements separately.)

The antimonopoly legislation provides for the following thresholds for the application of merger control:

- acquisition of voting shares in joint-stock companies (more than 25 per cent, 50 per cent and 75 per cent of the voting shares) and acquisition of participatory interests in limited liability companies (over one third, one half and two-thirds of participatory interests);
- acquisition of rights that enable the purchaser to determine the course of business of another legal entity or to carry out functions of an executive body of such a legal entity;
- transfer of assets where the balance sheet value of the transferred assets exceeds 20 per cent of the balance sheet value of the total fixed and intangible assets of the transferor (excluding land plots and non-production buildings);
- establishment of a legal entity if its charter capital is paid by shares, fixed assets or intangible assets; and
- corporate restructurings (in form of merger or accession).

Pre-merger clearance by FAS is required if:

- the purchaser and the target, together with their groups of persons, exceed materiality thresholds

either by the aggregate book value of assets on a worldwide basis or by annual turnover on a worldwide basis (7 billion roubles for the assets and 10 billion roubles for the turnover);
- the aggregate book value on a worldwide basis of all companies within the target's group exceeds 250 million roubles; and
- as a result of the transaction, the purchaser will have the right to dispose of more than 50 per cent of voting shares or stakes in respect of a foreign company that supplies goods to the territory of the Russian Federation in the amount of more than 1 billion roubles during the year preceding the date of the transaction.

In 2017, the FAS considered the acquisition by the TechnoNikol group (one of the largest producers of mineral wool in the Russian Federation) (the Acquirer) of ZNOiM JSC, which is carrying out a similar activity with the Acquirer.

Analysis of the state of competition in the mineral rock wool market showed that the implementation of this transaction will lead to the emergence of the dominant position of the Acquirer (its group) in the market within the borders of the Central and North-Western Federal districts and increase concentration in the initially highly concentrated market.

Taking into account the position of the TechnoNikol group of companies in the rock wool market and also the fact that the Acquirer has not presented arguments regarding the recognition of the transaction as permitted in accordance with article 13 of the Law on Protection of Competition, the FAS decided to block the merger.

When making a decision to block the transaction, the FAS takes into consideration, among other things, by foreign practice, namely the Horizontal Merger Guidelines promulgated by the Antitrust Division of the United States Department of Justice in conjunction with the Federal Trade Commission in 2010, according to which mergers that increase the Herfindahl-Hirschman Index by more than 200 points in highly concentrated markets raise antitrust concerns, are presumed to be likely to enhance market power and are subject to prohibition, except when evidence are presented that there is no strengthening of market power as a result of the merger.

The TechnoNikol Group reapplied to the FAS, submitting evidence of the admissibility of the announced transaction and assuming a number of obligations, including obligations to finance the development of heat and soundproof materials.

Evaluation of the effectiveness of the merger made it possible to conclude that this is beneficial for consumers, given, among other things, the likely alternative scenario – the closure of the enterprise (bankruptcy). A similar approach in considering transactions in the European Union is reflected in the White Paper 'Towards more effective EU merger control'.

Taking into account the above facts, the FAS made a decision on the approval of this merger with the simultaneous issuance of remedies containing behavioural conditions aimed at ensuring competition.

Has the authority ever imposed conditions on a proposed merger? If yes, please provide the most recent instances.

Behavioural and structural remedies apply to transactions as a result of amplification (occurrence) of a dominant position or of competition restriction, including in the adjacent markets in cases when the performance of such remedies allows for the avoidance of negative consequences (paragraph 2, part 1, article 23 of the Law on Protection of Competition). In 2018, the FAS issued 67 decisions with remedies on pre-merger notifications.

In 2018, the FAS approved the acquisition of less than 50 per cent of the voting shares of Uniper SE (Germany) by Fortum Deutschland SE (Germany).

The Fortum Deutschland SE group, indirectly 100 per cent owned by the public company Fortum Oyj, includes the generating company PJSC Fortum, which carries out activities for the production and purchase and sale of electrical energy in the Russian wholesale electricity market within the First Price Zone (Europe and the Urals)

One of the acquired companies is the generating company PJSC Unipro, which carries out activities for the production, sale and purchase of electric energy on the wholesale electric energy market within the boundaries of the First and Second Price Zones (the Siberian zone).

According to the results of the transaction, the FAS approved the deal with remedies, which the merging parties should implement during the next five years, containing a number of behavioural remedies for companies aimed at:
- prevention of actions that lead or may lead to a significant increase in prices on the wholesale market of electric energy and power in the formation of price bids for participation in the competitive selection procedure for the day ahead;
- using the strategy of minimising the cost of fuel to produce a unit of electrical energy; when choosing

the structure of consumed fuel for each hour of the day – consuming the cheapest type of technologically used fuel; and
- submitting quarterly information to the FAS on the progress of the execution of the prescription.

This acquisition is part of a very large international deal, valued at about US$4 billion. Fortum is planning a significant investment programme in Russia: in the period up to 2023, the company plans to invest 9 billion roubles to replace and maintain heating networks, 10 billion roubles to bring assets in compliance with the requirements of the law, and 8 billion roubles in projects for maintenance and replacement of generating and other equipment.

The experience of the previous interaction with the Finnish company has shown that Fortum is very interested in the technological and financial development of its Russian assets and in increasing the efficiency of Russian companies. Under such circumstances, foreign capital becomes a tool for developing competition in the country.

Has the authority conducted a Phase II investigation in any of its merger filings? If yes, please provide the most recent instances.

In 2018, the FAS opened a Phase II investigation in 171 merger fillings.

Application to the FAS should be provided together with information and documents as required by the Competition Law. All documents should be provided in hard copy or in electronic form. If the package of documents is not complete, it may be returned to the applicant.

When obtaining preliminary consent, the FAS has a basic period of one month to review the application from receipt of a complete filing (Phase I). The FAS may then open a Phase II investigation, lasting a maximum of a further two months (for example, three months in total).

If the FAS decides to issue a decision on remedies that must be implemented by the parties before its final clearance, it can postpone the final decision and set the period for implementing the mentioned remedies, which could be up to nine months. In the latter case, the total period for obtaining preliminary consent could be a maximum of 11 months. Cases in which it is necessary to implement the mentioned remedies and then negotiate the deal are extremely rare.

In 2017–2018, the FAS considered the merger between Bayer AG (Germany) and Monsanto Company (US) and concluded a review of it in two phases: the competition analysis and the imposition of conditions on the merging company (7 November 2017) and the final approval of the merger (20 April 2018).

This merger affects the markets for the products used by agricultural producers including agricultural crops (seeds), certain crop protection products, in particular nonselective herbicides, as well as digital offerings for agriculture.

Both Bayer and Monsanto are vertically integrated full-cycle agrotechnology companies active in agrotechnology research and development as well as in the distribution and marketing of their products to agricultural producers.

The first phase of the review corresponded to the FAS decision to impose conditions on the merging company. The conditions put forward on 7 November 2017, contained requirements to Bayer AG aimed at creating conditions for the development of potential competition from Russian companies.

In the course of this merger review, the FAS organised a series of consultations with the relevant federal authorities, as well as scientific and business communities and foreign competition authorities. The FAS also met the parties of the merger in order to discuss the possible negative effects the merger could have on competition as well as remedies helping to eliminate them.

Considering that technological transformations, including digitalisation worldwide, have become key to understanding competitive dynamics in the agricultural sector, the FAS has applied new methodological approaches to identify potential anticompetitive effects of the merger both in the Russian and global markets developed in cooperation with reputable academic institutions.

The FAS has conducted market analysis for the factors of agricultural production relevant to the merger review including emerging market integrated agrotechnological solutions that has been recently formed in a process of ongoing systemic technological and business transformations within the agricultural sector.

All these markets were analysed by the FAS in the context of increasing globalisation of the world economy and integration of agricultural production into the global food value chains. This required the FAS to assess not only 'horizontal' relations between the market competitors but also 'vertical' interactions between different segments of the global food value chains.

In the context of the accelerating pace of innovation in the agrotechnology sector, the FAS assessed not

only the merging parties' market shares but also the most probable scenarios for market transformation including changes in their competitive structure and dynamics in the short and medium term perspectives.

These changes are caused by an ongoing systemic shift in the agrotechnology markets that requires from companies, if they want to be globally competitive, to provide integrated (packaged) solutions to farmers that includes customised seeds, targeted crop protection solutions, as well as digital solutions based on big data analysis (with regards to soil, climate and other agronomic parameters) collected and processed within the digital farming platforms.

Moreover, due to a high degree of globalisation of Russian agricultural production both in terms of export of agricultural products and importation of factors of production, the above-mentioned global systemic transformations in the agricultural sector are transmitted to the Russian market.

In assessing the impact of the transaction on competition in the Russian market, the FAS considered the assumption that the combined company possesses strong capacities including big genetic data; the latest technologies for accelerated genetic selection allowing the development of biotechnology seeds with predicted characteristics not subject to regulatory restrictions aimed at the control of cultivation of genetically modified organisms; as well as big data and algorithms for digital farming. All this could allow the combined company to increase its market power in a technologically changing environment quickly and effectively. This could possibly lead to a fast increase in the combined company's market share and for it to reach a dominant position in the affected markets dependent on the above-mentioned technological changes; as well as the creation of high entry barriers for market player lacking some of those technological and data capacities at once.

The FAS concluded that the merger could cause the following anticompetitive effects:

- creating new and increasing existing barriers to entry in relevant markets (including those generated by introduction of closed digital agronomic platforms to the Russian market);
- enhancing incentives for anticompetitive agreements and concerned practices (considering the already high level of concentration in this sector, the merger might substantially reduce a number of market players having all necessary technical and data capacities to effectively compete in the new technological and economic environment); and
- increasing the possibility of abuse of market power (combining innovative technologies, data and platform solutions will allow the combined company to rapidly increase its market share up to a dominant position in a short term perspective).

Hence, the FAS has concluded that the merger creates substantial risks of restriction of competition and those risks should be levelled in the course of the merger review.

The requirements contained in conditions imposed by the FAS on Bayer AG provide for the transfer to Russian companies of the molecular means of selection and germplasm needed to create new varieties and hybrids, with which the combined company has a strong position in the Russian market.

In addition, in order to develop competition in the digital farming markets, the prescription of the FAS also contains obligations to provide Russian companies engaged in the development of agricultural software and applications with non-discriminatory access to digital farming platforms, including access to historical data related to the Russian Federation, as well as to the data that will be collected by Bayer AG after it commercialises its software products on the territory of the Russian Federation. Access to such data is a key factor for the development and implementation by Russian companies of their IT developments in the field of precision farming.

The obligations of Bayer AG also imply the creation of a plant biotechnology research centre in the Russian Federation, which will provide practical training for Russian specialists in the field of accelerated breeding with the involvement of highly qualified specialists with significant experience in this field.

In April 2018, the FAS made a decision to approve the merger .

Considering the global nature of this transaction (the transaction is being considered in more than thirty jurisdictions), in preparing its decision, the FAS actively cooperated with foreign competition authorities using waivers, which allow competition authorities to exchange confidential information, with the purpose of developing common approaches and synchronising requirements for participants in the transaction.

Taking into account the fact that in order to monitor the fulfilment by Bayer AG of the requirements contained in the FAS prescription, as well as that special knowledge in the field of selection and IT technologies is required to efficiently transfer molecular breeding tools and germplasm, a mechanism that is new for Russian practice was used, entailing the involvement of a third-party organisation in the process, on the

basis of which the Technology Transfer Centre was established.

Has the authority ever pursued a company based outside your jurisdiction for a cartel offence? If yes, please provide the most recent instances.

According to part 2, article 3 of the Law on Protection of Competition:

> *The sphere of application of the Federal Law On Protection of Competition in the provisions of this Federal Law is applicable to any agreements and deals concluded between the Russian and (or) foreign persons or organisations outside the Russian Federation, as well as to their actions, provided such agreements or deals or actions influence considerably competition environment in Russia.*

Liner shipping case

The FAS found that AP Moller-Maersk A/S (Denmark), CMA CGM SA (France), Hyundai Merchant Marine Co Ltd (Korea), Orient Overseas Container Line Limited (Hong Kong) and Evergreen Marine Corp (Taiwan) violated clause 1, part 1, article 11.1 of the Federal Law 'On Protection of Competition'. The above-mentioned companies are competitors and exercised prohibited concerted actions that led to fixing mark-ups (extra payments) to freight rates on the market of liner container shipping on the Far East/Southeast Asia–Russian Federation (St Petersburg, Ust-Luga) routes in 2012–2013.

The FAS established that in 2012–2013, information about mark-ups to freight rates was published on a website of one of the carriers, after which other market participants fixed the same mark-ups. Such concerted actions are prohibited for competitors, whose consolidated share of a relevant market exceeds 20 per cent and the market share of each entity exceeds 8 per cent. No Russian company is included in the 'top 50' marine liner container operators. Therefore, domestic participants of international economic activities fully depend on the quality and the costs of services supplied by foreign companies. Sudden changes in prices increase the prime costs of goods for domestic consumers.

The shipping companies filed a lawsuit to invalidate and abolish the FAS decision. However, on 7 September 2016, Moscow Arbitration Court supported a decision of the antimonopoly body regarding international container lines.

In 2017, the FAS reached a settlement with companies, within the framework of which the carriers stopped the violation and undertook obligations, executing which will enable fair conditions for consumers of liner shipping services.

The FAS, together with the market participants, devised the Guidelines 'On Publication of Freight Charges by International Shipping Lines' to determine the common conduct rules and principles on the market of liner marine transportation.

Do you operate an immunity and leniency programme? Whom should potential applicants contact?

Yes. The legal basis for the leniency programme is set out in the notes to article 14.32 of the Code of Administrative Offences of the Russian Federation (the Administrative Code). A person who voluntarily reports to the FAS or its Regional Office on the conclusion of an agreement prohibited by the antimonopoly legislation of the Russian Federation, or about exercising concerted actions prohibited by the antimonopoly legislation of the Russian Federation, is relieved from administrative liability for administrative violations specified in parts 1 and 3 of article 14.32 of the Administrative Code, provided the following conditions are met as a whole:

- at the time of the person filing an application, an antimonopoly body did not already have relevant information and documents about the committed administrative offence;
- the person refuses to participate or further participate in the agreements or to exercise or further exercise concerted actions; and
- the information and documents presented are sufficient to establish the administrative violation.

The FAS's website contains information on how a person is released from an administrative penalty, if the person voluntarily applies to the competition authority, as well as the contact details to report a cartel. Confidentiality of information is ensured by the FAS in accordance with the current legislation of the Russian Federation.

In 2018, 97 leniency applications for cartels were submitted to the FAS.

The legislation of the Russian Federation also oversees the mitigation of administrative liability. Companies that do not apply for leniency may use the mitigation mechanism. (The fourth antimonopoly package provides minimal administrative fine for second and third voluntary reported persons, except for leaders of a cartel: 20,000 roubles for executive officers of the company; 1 per cent of the company's earnings

from selling goods or amount of costs for acquiring goods at the relevant markets; 10 per cent from value of bid cost; or 100,000 roubles from aggregate revenue of all goods and provided services).

Currently, the leniency programme and the mitigation mechanisms tend to be the most effective instruments in combating cartels and other anticompetitive agreements. In accordance with FAS Order dated 26 September 2008 No. 369, the deputy head of the FAS and the head of the Anti-cartel Department are in charge of receiving claims (applications) on facts of concerted actions or other anticompetitive behaviour in accordance with antimonopoly legislation of the Russian Federation. The heads of the FAS's departments and of its regional offices should immediately inform mentioned persons if they have received such applications. The Anti-cartel Department of the FAS exercises the reception, registration and storage of applications. Receipt of such an application is recorded in a special register. Applicants submitting a request receive a copy of their statement and a unique registration number confirming the receipt. If the applicant has informed the Competition Authority that the information provided is a commercial secret, such information is marked 'For internal use only'. Disclosure of such information for other (third) parties is possible only by Court Order.

Information concerning application to the FAS for leniency can be submitted via all possible methods of public communication. In particular, the FAS website contains a special section called 'Report cartel collusion', where one can find information on liability for participation in cartels, obtain a release in accordance with Russian legislation, contact persons in the FAS and other useful information.

The FAS has created a special website, located at www.anticartel.ru, devoted to providing information about the dangers of cartels and how to fight them. A person can find easy-to-read guidelines, ask questions, observe anti-cartel enforcement practice and other relevant features of the Russian legislation. One of the main goals of this project is to bring together all Russian anti-cartel enforcement practices, to sum up foreign experience and to create a unified useful database.

Currently, the FAS takes active action in formalising a marker system in the leniency programme. Related drafts of legal documents have been developed. In future, a special FAS Regulation will be adopted on this matter which describes:

- the prospective benefits for marker applicants of the marker system;
- who has a right to receive a marker;
- what steps should be taken to initiate the process
- what the requirements for obtaining a marker are;
- when the marker stops being a proposition of the leniency programme;
- the procedure for obtaining conditional options of the leniency programme and what is necessary for this step; and
- what the content of the marker should be.

What discounts are available to companies that cooperate with cartel investigations?

The Russian competition legislation provides a mechanism for mitigating administrative punishment. Economic entities that are unable to use the leniency programme (as the first to fulfil all necessary requirements) can take action to mitigate the administrative penalty. In accordance with article 4.2 of the Administrative Code, the following are deemed as circumstances mitigating administrative liability:

- voluntary termination of offending behaviour of the person committed an administrative offence;
- voluntary reporting on the offence to the competition authority by the person committed an administrative offence;
- the establishment of the circumstances of the case
- administrative offence with the assistance of the person committed an administrative offence;
- preventing the harmful effects by the person who committed the offence;
- voluntary compensation or elimination of the damage by the person committed the offence;
- voluntary compliance regulations to undo the violation;
- the person who committed the offence does not organise the competition-restricting agreements or concerted actions, or received binding instructions to participate; and
- the person who committed the offence has not begun to fulfil the competition-restricting agreement.

Depending on the number of mitigating actions by the company, the competition authority may reduce the amount of the fine from 15 per cent to 1 per cent of company's earnings from selling goods, or amount of costs for acquiring goods at the relevant markets, from 50 per cent to 10 per cent of the value of the bid cost, but not less than 100,000 rubles from the aggregate revenue of all goods and provided services.

Is there a criminal enforcement track? If so, who is responsible for it? Does the authority conduct criminal investigations and prosecutions for cartel activity? If not, is there another authority in the country that does?

Cartels are prohibited by law and participation in a cartel is the basis for administrative or criminal liability. If a cartel is proven, the FAS shall bring its participants to administrative liability.

If the FAS discovers signs of a criminal offence in the actions of a cartel participant, the materials of such case shall be submitted to the Russian Ministry of Internal Affairs (MIA). In case of serious economic crimes, it shall be submitted to the Federal Security Service.

Thus, the FAS is not empowered to initiate criminal cases, the MIA initiates them with all necessary assistance of the FAS.

Criminal liability for cartels occurs in case of large-scale or especially large-scale damage caused to individuals, companies or the state, or as a result of gaining large-scale or especially large-scale income. Income exceeding 50 million roubles is recognised as large scale and if it exceeds 250 million roubles it is recognised as especially large scale. Large-scale damage exceeds 10 million roubles; especially large-scale damage exceeds 30 million roubles. Up to seven years' imprisonment is the most severe penalty provided for cartel activity, in accordance with article 178 (Restriction of Competition) of the Criminal Code of the Russian Federation.

Cases where state officials are found to be involved in anticompetitive agreements are submitted to the Investigative Committee of the Russian Federation (IC). Cooperation between the FAS and the IC is regulated by a special agreement on cooperation signed between the authorities.

In 2014, the FAS and MIA issued a joint Order No. 878/215 'On Approval of the Regulation on Procedures of Cooperation between the Ministry of Internal Affairs and the Federal Antimonopoly Service'.

The interaction of the FAS with the MIA can be conducted in three ways.

- After the decision on violation of the antimonopoly legislation has been issued, the FAS sends materials, the decision and the case file to the MIA for an initiation of a criminal case.
- The MIA sends materials to the FAS in which there are signs of violation of the antimonopoly legislation, the FAS initiates an investigation and if a violation is recognised, it sends a decision on the case to the MIA for inclusion in the criminal case file.
- Authorities conducting operational investigative activities transfer materials with signs of violation of the antimonopoly legislation to the investigating authorities for a decision in accordance with articles 144 (Procedure for examining a crime report) and 145 (Decisions made following the examination of a crime report) of the Code of Criminal Procedure. Copies of the materials of the pre-investigation check are sent to the FAS with the request to give an expert opinion. Further, the investigator (detective) initiates a criminal case, taking into account the opinion of the FAS. At the same time, the FAS initiates a case on violation of the antimonopoly legislation. If there has been a violation, the materials of the case and the decision of the FAS are transferred to the investigator (detective) to be attached to the criminal case.

In 2018, the FAS transferred materials of 148 cases to the MIA, 81 of which concerned article 178 of the Criminal Code. The remaining cases concerned other articles of the Criminal Code, such as fraud, offence of criminal association, and other economic and corruption crimes.

Based on materials of the FAS, there were 33 criminal proceedings initiated in 2018, including 14 in accordance with article 178 of the Criminal Code.

Of these, 14 cases were sent to the court with an indictment, two of which concerned article 178 of the Criminal Code.

In November 2015, the FAS found that the Federal Agency for State Border Infrastructure Development, Rosgranstroi, a federal state-owned enterprise and CJSC violated article 16 of the Law on Protection of Competition. Top executives colluded, which led, in particular, to CJSC unlawfully winning several biddings for the works on developing design and engineering documentation and reconstructing several border checkpoints.

In return, CJSC transferred some of the money paid under the government contracts to the account of a shell company, the contact information of which was provided by the former head of Rosgranstroi.

In March 2013, the Federal Agency for State Border Infrastructure Development decided to procure the works on finishing construction of the Adler railway border checkpoint from the single contractor – CJSC evading the then applicable law on public procurement (No. 94-FZ).

The materials of the antimonopoly investigation were transferred to the law enforcement bodies and used by them proving the guilt of the top officials of

the Federal Agency for State Border Infrastructure Development and Rosgranstroi.

A former director of the Federal Agency for State Border Infrastructure Development was found guilty of embezzlement of 490 million roubles and was sentenced to nine years of imprisonment for multiple offences, including serious fraud (part 4, article 159 of the Criminal Code) and offence of criminal association (article 210 of the Criminal Code). The former head of 'Directorate on construction and operation of Federal Agency for State Border Infrastructure Development facilities' and his deputy were sentenced to seven years in a penal colony and top executives of several commercial firms to five and 2.5 years in a penal colony.

Are there any plans to reform the competition law?

A significant event of 2017 was the signing by the President Vladimir Putin of the Resolution No. 618 'On the Main Directions of the State Policy on the Development of Competition', which approves the National Plan for the Development of Competition in the Russian Federation for 2018–2020 and which deals, inter alia, with the issues of improving antimonopoly regulation in the conditions of the development of the digital economy and its globalisation.

Therefore, the fifth antimonopoly package will include the introduction of new methods for determining the dominant position of the economic entity in the commodity market, ensuring equal conditions for competition between foreign and Russian suppliers in related markets in the digital economy by defining the procedure for applying competition laws to actions and agreements for the implementation of exclusive rights to the results of intellectual activities, as well as the introduction of legal tools for countering cartels based on digital algorithms.

In this regard, the FAS drafted a federal law 'On Amendments to the Federal Law "On Protection of Competition" and other legislative acts of the Russian Federation' (the fifth antimonopoly package).

Technologies (primarily digital technologies), information, digital and information platforms, and intellectual property form the basis of the modern market system.

Information and technologies can be spread and used among economic agents as part of legitimate cooperation or with intent to prevent, restrict or eliminate competition. In practice, the intensive development of information technologies apart from benefits also leads to the creation of 'advanced' anticompetitive practices.

In some spheres, new digital companies exercise significant influence on the real sector of economy. Evaluating the market position of a certain company, competition authorities have to take into account such phenomenon of the IT sector of the economy as direct and indirect network effects.

Direct network effects result in increased demand for a product as a consequence of an increase in the number of users. Such effects can serve as a serious obstacle to market entry. Achievement of a certain level of demand, a certain number of customers, comparable to the network effect achieved by a competitor becomes the condition for entering the market.

Indirect network effects, also referred to as network externalities, result in increasing demand for products and applications that come in addition to the core product.

In order to keep up with the evolving social relations in the digital economy, it is necessary to update antimonopoly legislation.

The draft law considers the introduction of additional criteria to the Law on Protection of Competition that allow the designation of owners of digital platforms as dominant players, if such a digital platform has a share of more than 35 per cent in the market of substitute services delivered using digital platforms related to ensuring interaction between economic entities (sellers and buyers) and if network effects based on the number of users of the digital platform give such economic entity the opportunity to exercise a dominant influence on the general conditions for the commodity circulation in the relevant market or to eliminate other economic entities from this market, or impede access of other economic entities to this market.

At the same time, in order to support the development of new projects based on the use of digital platforms, the draft law proposes to institute a rule stating that the owner of a digital platform, or several similar (substitutable) digital platforms, whose revenues for the last calendar year did not exceed 400 million roubles cannot be designated as dominant player.

In order to implement the proposed provisions, the draft law also defines the digital platform as an infrastructure located on the internet, which is used to organise and provide interaction between sellers and buyers.

It is also proposed to define the concept of 'network effect' – the dependence of the consumer value of goods on the number of consumers of the same group (direct network effect) or the change in the value of the goods for one group of consumers with a decrease or increase in the number of consumers in another group at the same time (indirect network effect).

Under conditions of the modern 'digital' markets, approaches to controlling transactions of economic concentration should change as traditional criteria based on the amount availed, or operations and value of their assets, may not reflect the real impact on the economic conditions of a transaction carried out as part of economic concentration and related to the regulation of intellectual property rights.

Considering the above, a new condition should be introduced in the first place to control transactions of economic concentration – if the volume of the transaction exceeds 7 billion roubles.

Taking account of successful foreign practice, it is proposed to specify in the Law on Protection of Competition the rules for involving a trustee for the purpose of monitoring and facilitating the execution of a ruling issued under economic concentration, which includes the transfer of rights to intellectual property and technology.

In order to protect the interests of market participants, the draft law proposes to determine additional consequences of failure to comply with the ruling of the competition authority issued as part of monitoring economic concentration and associated with the use and transfer of intellectual property rights.

Thus, it is proposed to establish that in case of non-compliance with the ruling of the competition authority, if such non-compliance leads or can lead to the prevention, restriction or elimination of competition, the competition authority has the right to:

- file a claim in court for the exemption to use in the territory of the Russian Federation in the interests of competition development the results of intellectual activity and equivalent means of personalisation belonging to the person to whom the ruling was issued, if the ruling was related to the exercise by such person of the exclusive rights to the results of intellectual activity and equivalent means of personalisation, under conditions of the ruling; and
- file a claim in court with the request to prohibit (restrict) the turnover in the territory of the Russian Federation, by the person to whom the ruling was issued, of goods produced using the results of intellectual activity, the exercise of exclusive rights to which is associated with the implementation of this ruling.

Adoption of the draft law will make it possible to ensure the effectiveness of antimonopoly compliance in the context of modern 'digital' markets, increase the protection of the rights and interests of bona fide participants in such markets from possible manifestations of monopolistic activity and create legal mechanisms to counter market power abuse by 'digital monopolies'.

Another important aspect for legislative novels is pricing algorithms that analyse markets and adjust prices. In conditions when companies use similar algorithms to optimise relationships with competitors, one should talk about the formation of cartels. The draft law proposes to define the concept of 'pricing algorithms' as a software designed to monitor prices on the commodity market, calculate prices for goods, set prices for goods or monitor prices for goods or take actions when bidding.

In accordance with Resolution No. 618, other plans to reform the competition law are the following:

- limiting the creation of unitary enterprises in competitive markets;
- prohibition of the acquisition by the state of shares of business entities operating in commodity markets in a competitive environment;
- determination of the procedure for the application of the antimonopoly legislation to actions and agreements on the use of intellectual property;
- exclusion of the possibility of classifying business entities operating in competitive areas of activity as subjects of natural monopolies;
- securing the rights of the consumer council for the implementation of public control over the activities of natural monopolies, companies with state participation and regulated organisations when making decisions on tariffs, as well as when approving investment programs and monitoring their implementation;
- determination of the basis of state regulation of prices (tariffs) using as a priority method comparable markets and a long-term (at least five years) regulatory period, as well as securing a single procedure for pretrial settlement of disputes related to the establishment or the use of regulated prices (tariffs) ;
- unification of bidding procedures within electronic auctions;
- improvement of tariff legislation; and
- development of an automated system for identifying and proving cartels.

When did the last review of the law occur?

On 5 October 2015, the President of the Russian Federation signed a package of amendments to the Russian antimonopoly legislation (the fourth antimonopoly package). On 5 January 2016, it came into force.

The package was developed to enhance competition legislation in Russia based on the best international experience. It aimed to reduce the administrative barriers for business and simultaneous decrease of government's presence in economy.

The law clarifies the criteria for the admissibility of vertical agreements, providing that such agreements are acceptable if the share of neither the seller nor the buyer does not exceed 20 per cent of the commodity market that is the subject of a vertical agreement. In addition, the agency agreement is now also treated as a vertical agreement, whereas in the previous edition of the Russian Law on Protection of Competition, an agency agreement was withdrawn from the application of this provision.

The law significantly expands the use of cautions. In addition to the actions of the dominant party to impose unfavourable conditions of the contract and unjustified refusal to sign the agreement, creation of discriminatory conditions and unjustified establishment of different prices are added as the basis for issuing cautions.

As regards the institution of warnings, competition authorities will be able to send warnings to directors of economic entities, as well as government and local officials, if their actions may lead to violation of the law.

The law introduces the provision in accordance with which the government has a right to determine the rules of non-discriminatory access to goods in the highly concentrated commodity markets if violations of antimonopoly legislation take place. This provision aims to improve transparency and the prevention of discriminatory conditions in the commodity markets, where a high share of an economic entity (70 per cent) is stable and allows it to define the general terms of trade unilaterally. The separate notification of natural monopolies' transactions is excluded.

The most important changes are made regarding suppression of abuse of dominant position. The law significantly reduces the possibility of recognising the dominant position of economic entity with a small share of the commodity market. For example, the provisions were eliminated from article 5 of the Law on the Protection of Competition in accordance with which the dominant position could be occupied by an economic entity with a share of less than 35 per cent, except in cases of collective dominance.

In addition, the law establishes an exception to the possibility of applying the prohibition on abuse of dominance if such actions lead only to the infringement of the interests of persons who are not involved into business activities. Antimonopoly restrictions would apply only if the actions of the dominant lead or may lead to suppression, restricting or eliminating competition and infringing the interests of other economic entities. Infringement of the interests of individuals not connected with the restriction of competition and entrepreneurship must be protected by the legislation on protection of consumer rights.

New provisions also concern the conclusion of joint venture agreements with prior approval by the antimonopoly authority in accordance with the rules of control over economic concentration. A company should pass the approval procedure if the joint venture concerns large companies (with total assets of more than 7 billion roubles).

The fourth antimonopoly package abolishes the existing Register of persons with over 35 per cent market share. The cancellation of the Register aims to protect the interests of persons against whom cases of abuse of dominant position are investigated.

The fourth antimonopoly package fully modifies the chapter on unfair competition. The law specifies various forms of unfair competition based on judicial and law enforcement practice.

In addition, the fourth antimonopoly package empowers the FAS to review decisions of its Regional Offices if such decisions violate the uniformity in the interpretation and application of the antimonopoly legislation, or violate the rights and legitimate interests of an indefinite number of persons or the public interest.

Certain provisions of the fourth antimonopoly package are associated with the improvement of investigating proceedings, such as the introduction of preliminary detention of the commission on violations, the consolidation of types of evidences, and the criteria of their relevance and admissibility.

The fourth antimonopoly package also establishes sanctions for violation of the procedure of compulsory procurements, sale of state or municipal property, procedure for concluding agreements on the results of such procurements or if such procurements are declared invalid.

The FAS also developed the small and medium-sized enterprises protection package of amendments to the Russian antimonopoly legislation, which was adopted in July 2016. It aims at exclusion of economic entities with no significant market power (small and medium business) from the scope of competition enforcement in cases of abuse of dominant position.

Moreover, in January 2016, the FAS developed the Federal Law concerning introduction of the administrative appeal in the construction sphere. The FAS

obtains functions on consideration of complaints in relation to state bodies, municipalities and utility organizations in the construction sphere. Legal entities could submit a complaint in the period of three months from the date of the violation. It is considered by the FAS for seven days. In case the FAS establishes the violation, the obligatory determination will be issued.

Therewith, on 28 April 2017, Federal Law No. 74-FZ 'On Amendments to the Code of Administrative Offenses of the Russian Federation' (Law No. 74-FZ) entered into force.

Law No. 74-FZ amends article 14.32 of the Code of Administrative Offenses of the Russian Federation establishing the differentiation of administrative responsibility for entering into and participating in various types of anticompetitive agreements, coordinating the economic activities of economic entities and the implementation by the business entity of concerted actions that are inadmissible in accordance with the antimonopoly legislation of the Russian Federation, on the base of the degree of public danger of the corresponding actions.

The code also concerned the empowering of the FAS with a reduction of fines for the second and third members of the cartel, who applied for leniency programme.

A significant event of 2017 was the signing by the President of the resolution on the main directions of competition policy in Russia.

Following by the elections of deputies to the VI State Duma of the Federal Assembly of the Russian Federation, which was held on 18 September 2016, regular meeting of the Russian government took place on 29 September 2016, at which the issue 'On state of competition in the Russian Federation' became the main item on the agenda. Igor Artemiev, head of the FAS, presented the report on the subject.

In accordance with paragraph 10, part 2, article 23 of the Federal Law of 26 July 2006 N 135-FZ 'On Protection of Competition', the FAS annually submits the Report on state of competition in the Russian Federation to the government and posts it on its official website on the internet.

The head of the FAS took the initiative to prepare the national competition development plan for 2018–2020. This initiative was approved by Dmitry Medvedev, the Chairman of the government of the Russian Federation. The finalised plan was submitted to President Vladimir Putin for consideration in 2016. At the same time, the Chairman authorised 10 Russian Ministries in consultation with the Ministry of Economic Development and the FAS to establish competition development plans (road maps) in their respective fields.

As a result, in December 2017, the President signed the Resolution of 21 December 2017 No. 618 'On the Main Directions of the State Policy on the Development of Competition' (the Resolution).

The Resolution establishes active promotion of the development of competition in Russia as a priority for activities of the President of the Russian Federation, the Federal Assembly of the Russian Federation, the government of the Russian Federation, the Central Bank of the Russian Federation, federal executive bodies, legislative (representative) and executive public bodies of the subjects of the Russian Federation, as well as the bodies of local self-government.

The Resolution also gives recommendations to the Supreme Court of the Russian Federation, the General Prosecutor's Office of the Russian Federation, senior officials (heads of the highest executive bodies of state power) of the constituent entities of the Russian Federation, local self-government bodies, the Public Chamber of the Russian Federation and public organisations on measures to promote development competition.

The document contains on the one hand approaches to setting priorities and principles of competition policy. On the other hand, it contains specific objectives for competitive markets, as well as expected outcomes.

The aims of improving the state policy on the development of competition are:

- increasing customer satisfaction by expanding the range of goods, works, services, improving their quality and reducing prices;
- increasing economic efficiency and competitiveness of economic entities, including by ensuring equal access to goods and services of natural monopolies and public services necessary for conducting business activities, stimulating innovation activity of economic entities, increasing the share of science intensive goods and services in the production structure, development of markets for high-tech products; and
- ensuring the stable growth and development of a multi-sectoral economy, development of technologies, reduction of costs in the scale of the national economy and reduction of social tension in the society, ensuring national security.

The Resolution provides for reducing the number of violations of the antimonopoly law by the authorities

in 2020 by no less than twofold in comparison 2017 and increasing procurement by public and municipal customers and state-run companies from small and medium business by 18 per cent.

To achieve those goals and objectives, the Resolution approves the National Competition Development Plan in the Russian Federation for 2018–2020 (the National Plan), which contains instructions for the implementation of a set of organisational and legal measures and contributes significantly to the de-escalation of public sector in economy and further support of small and medium-sized enterprises.

In particular, it is designed to reduce the share of state participation in the competitive sectors of economic activities, including:

- limiting the formation of unitary enterprises;
- reforming tariff regulation;
- the effective prevention and suppression of antimonopoly violations that lead to restricting and eliminating competition on the markets; and
- supporting entrepreneurial initiative, including development of small and medium business.

Furthermore, on 5 April 2018, the meeting of the State Council on promoting competition was held, as a result of which the President of the Russian Federation has instructed the government establish the integrated 'road map' on the development of competition for 2018–2020.

The document defines lists of key indicators, including the achievement of expected results in such sectors and spheres of the economy.

A number of instructions contained in the National Plan refers to the activities of federal executive bodies, executive authorities of the subjects of the Russian Federation and local self-government bodies.

The heads of regions were instructed to identify key indicators of competition development in at least 33 of 41 economic sectors – from education to transport and to devise and implement 'road maps' for developing competition.

In accordance with the National Plan, a particular attention (with the creation of road maps of developing competition) will be paid to the following 13 industries of the Russian economy: transport (including railroad, air and waterway); chemicals; communication and information technologies; road construction; the defence industry; housing sector; oil and gas industry; electric energy; agroindustrial complex; fishing industry; healthcare; education; and foreign trade activity.

The Resolution and the National Plan are the first such documents in Russian history. The documents determine the principles of interaction between the state and the society, implying intolerance to any incidents of unfair competition and abusing monopolistic position. The authorities at all levels will evaluate management decisions, taking into account the consequences of such decisions for competition. The FAS expects that every three years the document will be modernised in line with current realities.

In accordance with the National Competition Development Plan, the government of the Russian Federation adopted the Resolution of 18 October 2017 No. 2258-p 'On the approval of Guidelines for the creation and implementation by federal executive bodies of antimonopoly compliance systems' (the Guidelines).

The Guidelines were adopted in order to form a unified approach to creating and implementing antimonopoly compliance systems by the federal executive authorities, the executive authorities of the subjects of the Russian Federation and the local governments (the Authorities).

The Guidelines identify the main goals, objectives and principles for the creation and implementation of antimonopoly compliance by the Authorities, the content and procedure for the adoption by the Authorities of a legal act on antimonopoly compliance and the procedure for creating and operating an authorised department responsible for the development and implementation of antimonopoly compliance.

The Guidelines also establish a procedure for identifying and assessing the risks of violating the antimonopoly legislation, which is an integral part of internal control over the compliance with the antimonopoly legislation by an authority.

The Guidelines include an analysis of identified violations of the antimonopoly legislation for the previous three years (cautions, warnings, fines, complaints, prosecutions), analysis of the participation of representatives of the business community of existing regulatory legal acts, drafts of regulatory documents, monitoring and analysis of the practice of applying the antimonopoly legislation, development and maintenance up to date of methods of identifying internal and external risks of violating the antimonopoly legislation within or in connection with the general policy of application of antimonopoly compliance.

The Guidelines contain the 'risk matrix', the assessment of indicators that is used by the authority to identify individual risks and compile a risk map.

At the same time, the Guidelines contain the procedure for familiarising employees (workers) of a governmental body with antimonopoly compliance

and training them in implementing the requirements of the antimonopoly legislation and antimonopoly compliance.

In addition, the provisions of the Guidelines provide for the implementation by the government of an assessment of the effectiveness of antimonopoly compliance, which establishes key performance indicators for the implementation of antimonopoly compliance measures for both the authorised department and the authority as a whole.

Do you have a separate economics team? If so, please give details.

The role of an economics team is ensured by the Methodological Council of the FAS, as well as the Commission on Commodity Markets of the FAS.

These two platforms help to discuss relevant economic market issues and methodology, including:

- the organisation of economic research at the FAS;
- the organisation of analysis performed by structural units and regional offices of the FAS related to competitive environment in the commodity and financial markets;
- providing the FAS with economic information received from other agencies;
- the preparation of information and analytical materials; and
- the synthesis of enforcement practice and methodical support of the FAS.

The Methodological Council of the FAS and the Commission on Commodity Markets are headed by Andrey Tsyganov, deputy head of the FAS.

Has the authority conducted a dawn raid?

To ensure compliance with the antimonopoly legislation, an antimonopoly body can carry out scheduled and unscheduled (dawn raids) inspections of the federal executive bodies, the authorities of the constituent territories of the Russian Federation, local self-government bodies, other agencies and organisations exercising the functions of the above bodies, as well as state extra-budgetary funds, commercial and non-commercial organisations, physical persons, including individual entrepreneurs (further on also referred to as an inspected person) (article 25.1 of the Law on Protection of Competition and the FAS Order of 25.05.2012 No. 340 on the approval of the administrative regulations of the Federal Antimonopoly Service for the execution of the state function to conduct inspections of compliance with the requirements of the antimonopoly legislation of the Russian Federation).

The FAS has the power to carry out the following activities in the framework of the investigation:

- require documents, explanations in written or oral form and different information including commercial, official or internal data protected by law;
- request information from individuals and legal entities;
- perform electronic or computer search;
- conduct planned and unplanned inspections (dawn raids) of legal entities and public authorities;
- explore the territory, premises, documents and objects of the entity; and
- involve specialists or experts with special knowledge when necessary.

These measures do not require court permission. During dawn raids, the FAS may examine documents and explore the territories and premises only of legal entities. Personal belongings may be inspected only by law enforcement agencies. If necessary, the FAS has the right to apply to law enforcement authorities for additional investigative actions that are beyond its powers.

In 2018, the FAS conducted 128 down raids.

Has the authority imposed penalties on officers or directors of companies for offences committed by the company? If yes, please provide the most recent instances.

Yes, the FAS has the right to bring officials and business executives to administrative liability:

- by failing to obey the lawful request of the antimonopoly authority, officials can be fined between 2,000 and 4,000 roubles (article 19.4 of the Administrative Code);
- by preventing the lawful activities of the antimonopoly authority from conducting inspections or by evading such inspections, officials can be fined between 2,000 and 4,000 roubles (part 1, article 19.4.1 of the Administrative Code);
- actions (inaction), provided by part 1, article 19.4.1 of the Administrative Code, that make the completion of the inspection impossible, are punished by a fine on officials of between 5,000 and 10,000 roubles (part 2, article 19.4.1 of the Administrative Code);
- repeatedly committing an administrative offence under part 2, article 19.4.1 of the Administrative Code, entails the imposition of a penalty on officials of between 10,000 and 20,000 roubles or disqualification for a period of from six months to one year (part 3, article 19.4.1 of the Administrative Code);

- in case of default in due time of the legal requirements (for example, regulations, submission, decision) of the antimonopoly body, officials may be fined between 18,000 and 20,000 roubles or disqualified for up to three years (article 19.5 of the Administrative Code);
- in case of failure to submit or the late submission to the antimonopoly body of any data provided by the antimonopoly legislation of the Russian Federation, including the failure to present data at the request of the antimonopoly authority, as well as the deliberate submission to the antimonopoly authority of any false data, citizens may be penalised between 1,500 and 2,500 roubles, and officials may be fined between 10,000 and 15,000 roubles (part 5, article 19.8 of the Administrative Code);
- failure to pay the administrative fine within the time limit fixed by the Administrative Code shall result in the imposition of double the amount of the unpaid administrative fine (but not less than 1,000 roubles), an administrative arrest for a period of up to 15 days, or compulsory work for a period of up to 50 hours (part 1, article 20.25 of the Administrative Code); and
- in case of recognition the company's participation in the cartel, officials may be fined (according to article 14.32 of the Administrative Code) between 20,000 and 50,000 roubles or disqualified for up to three years.

It should be noted that not only officers of companies but also public officials could face administrative fines.

In accordance with articles 15 and 16 of the Law on Protection of Competition, the FAS is empowered to monitor the actions of public authorities, including anticompetitive acts and actions (inactions) taken by them, as well as agreements restraining competition or concerted actions. For violation of the prohibitions established by these articles, the FAS has the right to make decisions on sanctions against the authorities. Moreover, for repeated violation public officials face disqualification without any alternatives according to the court decisions.

In 2018, the FAS considered 6,394 applications (article 15, acts and actions that restrain competition), 461 cases were initiated. In 383 cases, a decision was made to recognize the violation and 272 prescriptions were issued.

In 2018, 524 applications regarding anticompetitive agreements with the participation of authorities were received (article 16, restricting competition agreements and concerted actions). 275 cases were initiated. In 233 cases, a decision was made to recognize the violation and 133 prescriptions were issued.

As an example of actions against public authorities' anticompetitive conduct, a case may be cited concerning illegal refusal to set a tariff.

The FAS received a complaint from JSC Urals Heat Network Company against the actions of the regional governmental body (the Ministry of Tariff Regulation and Electric Power Industry of the Chelyabinsk region), which was expressed in the refusal to set a tariff for the company.

The FAS issued a warning to the ministry, but it was not executed on time. In this regard, the FAS initiated a case against the authority on the grounds of violation of the antimonopoly legislation and found it violated the Federal Law 'On Protection of Competition' (clause 2, part 1, article 15). The ministry unreasonably deviated from making a decision on the tariff application of JSC Urals Heat Network Company.

The FAS issued a ruling, on the basis of which the ministry had to stop the violation and establish a tariff in relation to JSC Urals Heat Network Company.

What are the pre-merger notification thresholds, if any, for the buyer and seller involved in a merger?

Under article 27 of the Federal Law on Protection of Competition, the following actions shall only be performed with the antimonopoly body's prior consent:

- the merger of commercial organisations (with the exception of financial organisations), if the aggregate value of the assets thereof (assets of their group of persons) in accordance with the accounting balance sheets as at the latest reporting date preceding the date of submission of the petitions (further on referred to as the latest balance sheet, in case of submission of a notice, shall be deemed to be the accounting balance sheet as at the latest reporting date preceding the date of merging the commercial organisations) exceeds seven billion roubles or if the aggregate revenues from sale of commodities of such organisations (their group of persons) for the calendar year preceding the merger exceed 10 billion roubles;
- joining one or several commercial organisations (with the exception of financial organisations) with another commercial organisation (with the exception of a financial organisation), if the aggregate value of the assets thereof (assets of their groups of persons) in accordance with their latest balance sheets exceeds 7 billion roubles or if the aggregate revenues from the sale of commodities of such organisations (their group of persons) from

the calendar year preceding the consolidation year exceed 10 billion roubles;

the merger of financial organisations or joining of one or several financial organisations with another financial organisation, if the aggregate value of the assets thereof, in accordance with their latest balance sheets, exceeds the amount established by the government of the Russian Federation (in case of a merger or consolidation of landing institutions, this amount shall be established by the government in coordination with the Central Bank);

- establishing a commercial organisation, if its charter capital is paid by stocks (shares) or property that are the main production-related assets or intangible assets of another commercial organisation (with the exception of a financial organisation), in particular, on the basis of an act of transfer or dividing balance sheets, and in relation to those stocks (shares) or property, the newly established commercial organisation shall acquire the rights stipulated by article 28 of this Federal Law and the aggregate value of the assets in accordance with the latest balance sheets of the founders of the commercial organisation (their groups of persons) and persons (their groups of persons), whose stocks (shares) or property are contributed to the charter capital, exceeds 7 billion roubles or if the aggregate revenues of the founders of the commercial organisation (their groups of persons) and persons (their groups of persons), whose stocks (shares) or property are contributed to the charter capital, from selling goods in the last calendar year exceed 10 billion roubles;
- incorporation of a commercial organisation if the charter capital is paid by stocks (shares) or assets of a financial organisation (except monetary funds) or the new commercial organisation acquires such stocks (shares) or assets of a financial organisation, and with regard to such stocks (shares) acquired the rights provided for by article 29 of this Federal Law, and the value of the assets in accordance with the latest balance sheet of the financial organisation whose stocks (shares) or assets are being contributed to the charter capital exceeds the amount established by the government of the Russian Federation (in case of the stocks (shares) or assets (except monetary funds) of a credit organisation, this sum shall be established by the government in coordination with the Central Bank);
- a financial organisation merging with a commercial organisation (except a financial organisation), if the asset value of the financial organisation in accordance with the latest balance sheet exceeds the value established by the government of the Russian Federation;
- a commercial organisation (except a financial organisation) merging with a financial organisation if the asset value of the financial organisation in accordance with the latest balance sheet exceeds the value established by the government of the Russian Federation (for merging with a credit organisation such value is established by the government in coordination with the Central Bank); and
- joint venture agreement performed by the economic entities and competitors in the territory of the Russian Federation if the aggregate value of the assets thereof (assets of their groups of persons) in accordance with their latest balance sheets exceeds 7 billion roubles or if the aggregate revenues from the sale of commodities of such economic entities (their group of persons) from the calendar year preceding the agreement exceed 10 billion roubles.

The requirement for obtaining the antimonopoly body's prior consent for exercising actions shall not apply if actions specified in this article are performed by members of the same group of persons on the grounds specified in clause 1, part 1, article 9 of this Federal Law, or if transactions specified in part 1 of this article are completed in compliance with conditions specified in article 31 of this Federal Law, or the performance of such actions are stipulated be acts of the President of the Russian Federation or acts of the government of the Russian Federation.

Every year the number of transactions subject to FAS control is decreasing due to amendments to the competition legislation aimed at elimination of unnecessary administrative burden to legal entities. In 2005, the FAS received around 6,000 pre-merger and 44,000 post-merger petitions. After changes to the antimonopoly law (consecutive introduction of four antimonopoly packages of amendments) as well as abolishing notifying merger control (30 January 2014) the figures fell down considerably. In 2015, the FAS considered 1,793 pre-merger and 165 post-merger notifications filed by economic entities. In 2018, the FAS considered only 1,086 pre-merger notifications and 189 post-merger notifications.

Are there any restrictions on investments that involve less than a majority stake in the business?

There are no restrictions for investments provided by the Federal Law on Protection of Competition. The

legal regulations for foreign investments within the territory of the Russian Federation are carried out as provided for by other federal laws, regulatory acts and international agreements of the Russian Federation.

The special Federal Law No. 57-FZ of 29 April 2008 'Procedures for Foreign Investments in the Business Entities of Strategic Importance for Russian National Defence and State Security' sets up special rules on acquiring shares in the business entities of strategic importance. The law divides foreign investors into two groups: public foreign investors, such as foreign states, international organisations and entities under their control; and private investors meaning any other entities. Public investors are banned to acquire controlling stake in Russian strategic company and must seek government approval to acquire a minority stake of more than 25 per cent of voting rights in strategic company and of 5 per cent in a company using federal subsoil.

A Russian strategic entity is considered 'under control' of a foreign investor if the latter has the right, directly or indirectly, inclusive on the contractual basis, to:

- manage more than 50 per cent of voting rights of the entity (or less than 50 per cent when the proportion of voting rights held by investor and other shareholders permits investor to determine decisions of the entity);
- determine decisions taken by the entity, including terms and conditions of conducting its business activity;
- appoint the CEO or more than 50 per cent of the collective executive body or the other managing body of the entity (board of directors, supervisory council, among others); and
- act as the managing company of the entity.

A Russian strategic entity using federal subsoil is considered 'under control' of foreign investor if the latter has the right, directly or indirectly, inclusive on the contractual basis, to:

- manage more than 25 per cent of voting rights of the entity;
- determine decisions taken by the entity, including terms and conditions of conducting its business activity;
- appoint the CEO or more than 10 per cent of the collective executive body or the other managing body of the entity (board of directors, supervisory council, among others); and
- act as the managing company of the entity.

Foreign investments in the strategic enterprises are considered by the special Commission on Monitoring Foreign Investment under the government of the Russian Federation. The commission considers and gives a preliminary approval of deals entailing the imposition of control over strategic legal entities by a foreign investor or a group of private individuals and legal entities comprising a foreign investor.

The head of the government of the Russian Federation is a head at the commission. The head of the FAS is a member and a secretary at the commission and reports on commission meetings.

The FAS is empowered to make proposals on matters requiring consideration at a meeting of the commission and to provide information and analytical support of the commission's activity.

In 2018, the commission considered 24 deals on foreign investments into strategic enterprises, 19 of which were approved (12 of them had remedies), with five being blocked or postponed. For nine years of its existence, the commission has blocked only 18 deals.

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ISBN 978-1-83862-222-0