



RUSSIAN FEDERATION FEDERAL ANTIMONOPOLY SERVICE

To: **Mr David S. Evans**
CEO & Founder
Competition Policy International

May 10, 2017

On Settlement with Google

Dear Mr David S. Evans,

Let me inform you that on April 17, 2017, the two-year legal process between the Federal Antimonopoly Service and Google ended up with a voluntary settlement in the Moscow District Court of Arbitration. The settlement allowed to find a mechanism to eliminate the violations of the antimonopoly legislation previously detected by the FAS Russia and to ensure competition on markets of mobile applications, especially mobile search.

The FAS Russia accused Google of violation of Part 1 Article 10 of the Federal Law “On Protection of Competition” by abusing its market dominance in September 2015⁶³.

The FAS Russia found violations in the Google’s actions which resulted in prohibition of pre-installation of other developers’ competing applications. As a result, due to refusals in regards to other manufacturers of mobile devices, pre-installation of mobile applications, which is the most efficient app distribution channel, was fully reserved by Google.

Additionally, the violation included provision of Google’s counterparties (mobile devices manufacturers) with access to Google Play application store only subject to certain conditions that the manufacturers of mobile devices in the Russian Federation had to fulfill. These conditions comprised mandatory pre-installation of other Google apps together with Google Play, their preferential placement on the devices’ home screen as well as mandatory installment of the Google search engine as default.

⁶³ Decision and prescription available at (Russian version only): <http://solutions.fas.gov.ru/ca/upravlenie-regulirovaniya-svyazi-i-informatsionnyh-tehnologiy/ad-54066-15>.



Based on the investigation's results on September 14, 2015, the FAS Russia issued a prescription to Google in order to require the company to remove anti-competitive restrictions from its agreements with manufacturers. This included the exclusivity and priority placement of Google apps as well as the provisions limiting installation of other developers' apps and services². Courts of two levels upheld the validity of the FAS Russia's decision³.

Admitted violation of Article 10 of the Law on Protection of Competition became grounds for imposing a fine on the company that is envisaged by Article 14.31 of the Code of Administrative Offences of the Russian Federation " in the amount of 438,067,400 roubles (about 7.3 million euros).

After several attempts to appeal the decision and prescription of the antimonopoly authority, the imposed fine for violating the antimonopoly legislation⁴ as well as the fine for failure to comply with the prescription⁵, Google admitted its fault and proposed the FAS Russia to reach a settlement. The FAS Russia, driven by the need to eliminate consequences of the violation and to restore competition in the market, agreed to sign the settlement agreement that was further approved by court.

According to the terms of the settlement agreement, Google will no longer demand exclusivity of its applications on Android-based devices in Russia; Google will be obliged not to restrict pre-installation of any competing search engines and applications (including on the default home screen); Google will refrain from stimulating pre-installation of the Google search as the only general search engine; Google will no longer enforce the parts of the previously signed agreements that contradict to the terms of the settlement; finally, Google will be committed to securing the rights of the third parties to include their search engines into the choice window.

For the devices that are currently circulating on the Russian market, Google will develop an active "choice window" for the Chrome browser which at the time of the next update will provide the user with the opportunity to choose their default search engine.

Within a few months, Google will develop for new devices a new Chrome widget that will replace the standard Google search widget on the home screen. This will allow end users of the devices based on the Android OS with the GMS package to see the new "choice screen" at the first launch of the new Chrome widget. This choice screen enables users to choose Yandex search or Google

² FAS Russia issues prescription to Google <http://en.fas.gov.ru/press-center/news/detail.html?id=39548>.

³ Court: Google violated the antimonopoly legislation <http://en.fas.gov.ru/press-center/news/detail.html?id=44968>; Appeal Court supported FAS Russia in a dispute with Google <http://en.fas.gov.ru/press-center/news/detail.html?id=46807>.

⁴ Fine on Google <http://en.fas.gov.ru/press-center/news/detail.html?id=46765>, Ruling on initiating the administrative case in relation to Google (Russian version only) <http://solutions.fas.gov.ru/ca/upravlenie-regulirovaniya-svyazi-i-informatsionnyh-tehnologiy/11-15403-16>.

⁵ Another million RUB fine on Google <http://en.fas.gov.ru/press-center/news/detail.html?id=47727>, Arbitration Court confirmed legitimacy of a fine upon Google Inc. <http://en.fas.gov.ru/press-center/news/detail.html?id=48354>, Appeal Court confirmed legitimacy of the fine upon Google Inc. <http://en.fas.gov.ru/press-center/news/detail.html?id=49251>.



search or any other search engine of those developers who will sign a commercial agreement on their inclusion to the choice screen.

Within 60 days after the approval of the settlement agreement by court, all the interested Russian search engines will be able to address Google for discussing potential conditions of their inclusion to the choice screen next year.

This makes the applications pre-installation channel on mobile devices open for application developers who will get equal rights and opportunities to access the devices on the territory of the Russian Federation.

Apart from restoring conditions for competition in the market of mobile applications, the implementation of the settlement will enable consumers to buy devices with the software that better corresponds to their expectations.

At the same time, Google will by no means limit or impede pre-installation of other developers' applications on the users' devices.

In accordance with the settlement agreement, Google is obliged to pay the fines imposed on it as a result of violating the antimonopoly legislation and failing to comply on time with the FAS Russia's prescription, the total sum of which constitutes 439 million roubles (approximately 7.3 million euros).

Implementation of the settlement's terms will be an effective mechanism for securing competition between the developers of mobile applications. The settlement's conditions prove possibility to reach a balance between the necessity to develop the Android ecosystem and interests of the third-party developers for promoting their mobile applications and services on Android-based devices. The settlement's implementation will have a positive impact on the market as a whole, while providing developers with additional options to promote their products.

Igor Artemiev
Head

