

A two-year dispute between FAS Russia and Google ended with the conclusion of the settlement agreement

April 21, 2017

Dear Ladies and Gentlemen,

We would like to inform you that on April 17, 2017 Arbitrazh court of the Moscow district approved the settlement agreement concluded between the Federal Antimonopoly Service (hereinafter – “**FAS Russia**”) and Google, which ended two-year dispute between antimonopoly authority and Google Corp.

In September 2015, FAS Russia initiated an investigation in respect of the company upon the complaint of Yandex, and found Google guilty of violation of requirements of Point 1 Article 10 of the Federal Law “On Protection of Competition” (hereinafter – the “**Competition Law**”) (abuse of dominant position).

FAS Russia found out that violations committed by Google resulted in banning of preinstall of competing applications of other developers. As a result of refusal to any other application developers, preinstallation as the most effective distribution channel was completely reserved by Google.

Furthermore, violation resulted in setting of particular conditions for contractors-mobile-device producers to be allowed to install Google Play application store on devices to be sold on the Russian market. These conditions includes mandatory preinstallation of a number of other applications of the company together with Google Play, which shall be placed in priority positions on the screen, mandatory installation of the Google search engine “by default”.

For the purposes of competition recovery on the market FAS Russia issued a prescription obliging Google to exclude anticompetitive provisions providing exclusivity and priority display right to Google applications and limiting installation of applications and services of other developers from the agreements with producers.

The courts of two instances confirmed legitimacy of the acts of antimonopoly authority.

The fact that Google was found guilty of violation of Article 10 of the Competition Law was the ground for the administrative fine to be imposed on the company under Article 14.31 of the Code on Administrative Offences of the Russian Federation in the amount of RUB 438 067 400.

Google addressed to FAS Russia with a proposal to conclude a settlement agreement. FAS Russia, following the necessity to mitigate any effect of the violations committed and ensure competition in the market, signed a settlement agreement.

Under the terms of the settlement agreement Google shall:

- refuse from exclusivity conditions for its applications on Android-powered devices in Russia;
- not limit the preset of any competing search services and applications (including default search on home screen);
- refuse from any stimulation of preset of Google search engine as the only available;
- refuse from further use of provisions of agreements which are contrary to the terms of the settlement agreement;
- undertake to ensure the rights of third parties to include their search engines in the selection window.

For devices, which are currently circulate in the territory of the Russian Federation, Google shall develop active “selection window” for the Chrome browser that will give the user the possibility to select a “default” search engine after the next update.

During the next few months, Google shall develop a new Chrome widget for new devices to be released to replace the standard Google search widget on the home screen. This will allow end-users of Android-powered devices with the GMS package to see "selection window" at the first launch of the new widget, which allows to set YANDEX or Google search or another search engine, the developers of which concluded a commercial agreement of inclusion in selection window with Google.

Within 60 days after court approval of the settlement agreement, the Russian search engine developers who are interested in such inclusion can contact Google to negotiate possible conditions for inclusion in selection window for the next year.

As a result, the mobile devices preinstallation channel is open for application developers in the territory of the Russian Federation, and they will gain equal rights and opportunities for access to the devices.

In addition to recovery of the conditions for competition in the mobile applications market, the implementation of the settlement agreement will allow consumers to purchase the devices with the software fully satisfying their expectations.

The user will be able change the settings and choose the “default” search engine, which suits him, at any moment.

Having said this, let us recall that Google shall restrict or prevent the preinstallation of applications of other developers on the user device in no way.

Overall, the Google and FAS Russia were succeed in reaching a compromise solution and establishing an effective mechanism of ensuring competition between developers of mobile applications. According to FAS Russia, a balance was found between the need for the development of the eco-system of Android and the interests of third-party developers to promote their mobile applications and services on the Android-powered devices. The implementation of the agreement will have a positive effect for the market as a whole, by providing developers with additional opportunities to promote their products.

ALRUD lawyers have extensive experience in provision of comprehensive support to clients in all areas of law, including in support of cases related to abuse of dominant position.

ALRUD lawyers are ready to provide the necessary legal assistance on all issues related to the described violations, as well as at support in cooperation with FAS Russia during conclusion and negotiation of the agreements with the antimonopoly authority.

Hope that the information provided herein would be useful for you. If any of your colleagues would also like to receive our newsletters, please let us know by sending us his/her email address in response to this message. If you would like to learn more about our **Competition/Antitrust practice**, please let us know about it in reply to this email. We will be glad to provide you with our materials.

If you have any questions, please, do not hesitate to contact the Partner of ALRUD Law Firm **German Zakharov** at **gzakharov@alrud.ru**.

Kind regards,
ALRUD Law Firm

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