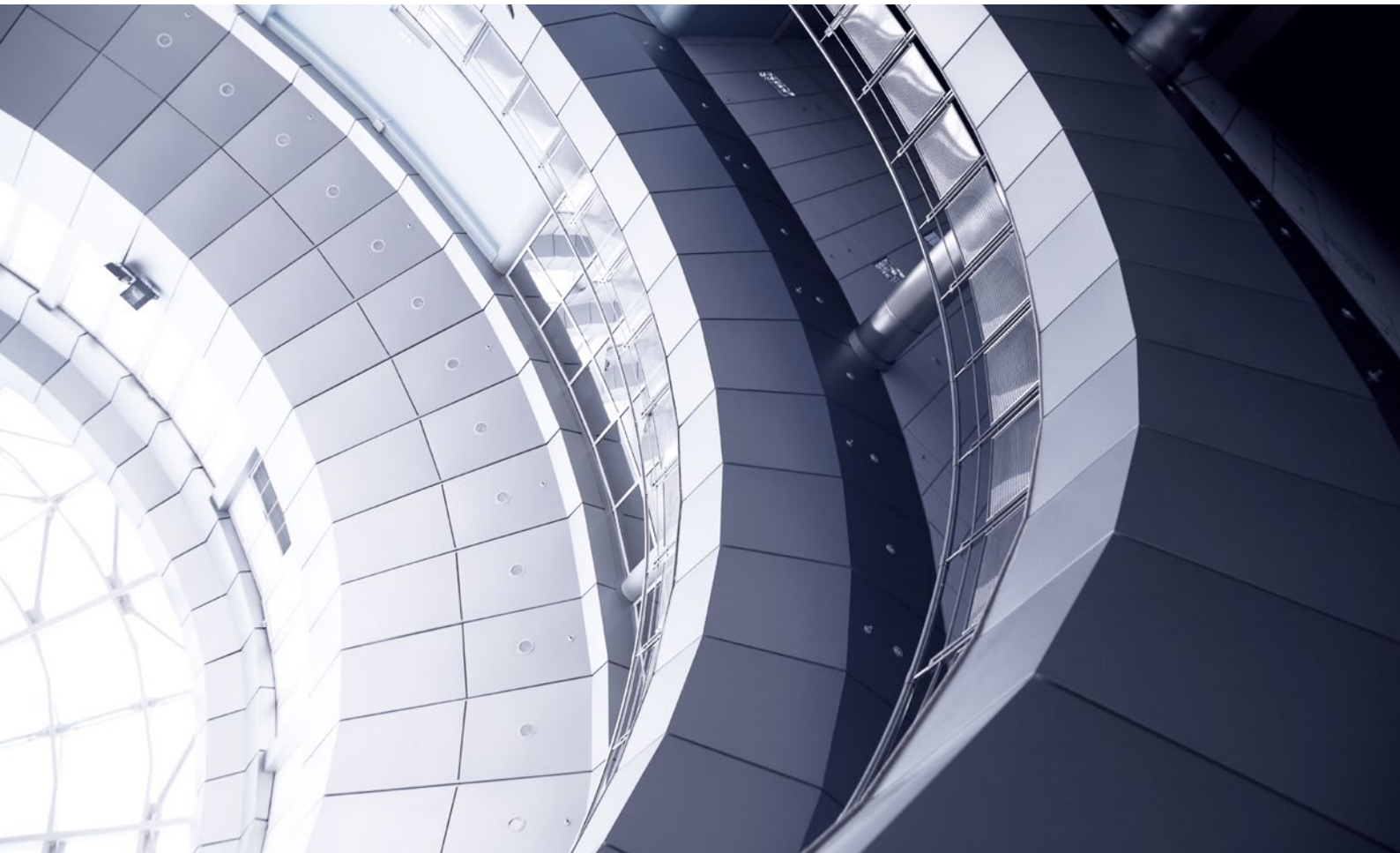


| ALRUD



| **Inspections
of the antimonopoly
authority**

General provisions

General provisions

Unscheduled on-site inspection by the Federal Antimonopoly Service (FAS Russia) is currently one of the main ways to obtain the evidences of violation of antimonopoly legislation.

“Today, carrying out of “dawn raids” has become standard procedure... These are sudden inspections with the use of procedures of examination, copying of electronic data and information and receiving written explanations. If, using the current legislation, it is possible to check the economic entity upon observance of a huge number of formal procedures, for “dawn raids” there is one exception - we organize the inspection suddenly, warning nobody”, – Andrey Tsarikovsky, Deputy Head of FAS Russia.

Legal framework

Procedure of conducting inspections is regulated by various different legal acts:

- Constitution of the Russian Federation;
- Code of Administrative Offences of the Russian Federation dated December 30, 2001 № 195-FZ;
- Federal Law dated December 26, 2008 № 294 “On protection of legal entities and entrepreneurs, while implementation of state and municipal control (supervision)”;
- Federal Law dated July 26, 2006 No.135-FZ “On Protection of the Competition” (**The Competition Law**);
- Order of FAS Russia dated May 25, 2012 No. 340 “On approval of the administrative regulation of the Federal Antimonopoly Service on the implementation of the state function of conduction of inspections on compliance with the antimonopoly legislation” (**The Regulation**).

Types of inspections

Currently, there are several classifications of inspections conducted by FAS Russia.

Character of controlling actions:

- scheduled
- unscheduled

Place of conduction and character of the process of data collection:

- desk
- on-site

Scope of inspections

Practically speaking, FAS Russia may request any information, search any documents that might be required in case such request or actions are motivated.

This approach can be justified by the court practice.

According to the Decision of the Presidium of the Supreme Arbitration Court of the Russian Federation No. 8039/12 as of November 27, 2012, the requests of FAS Russia are considered as justified, if they contain a reference to a procedural reason of requesting of information (for example, reference to particular case) and legal basis (Article 25 of the Competition Law).

Rights of antimonopoly authority officials in relation to the inspections

Officials of FAS Russia have the following rights during inspections:

- the right to unimpeded access to the territory and/ or into the premises, buildings of the inspected entity (except into the houses and private property of the employees of the inspected entity);
- to receive documents, explanations in written or oral form, information, including commercial, official and other secrets protected by law, after a motivated request, within the prescribed period, in accordance with its rights and duties;

- the right to unimpeded examination of territories, buildings and premises occupied by the inspected entity, documents and information (data) contained in any of its data carriers (if it is required during the inspections, it is not prohibited to take photos, to film the process of inspection and also to make copies of the documents provided).

Duties of officials of the antimonopoly authority during inspections

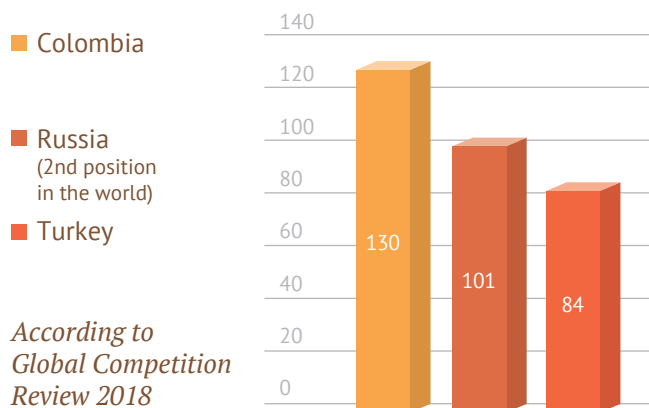
Officials of FAS Russia have the following duties during inspections:

- to comply with the legislation of the Russian Federation, respect rights and legitimate interests of the inspected persons/entities;
- to carry out an inspection on the basis of the order of the Head of FAS Russia;
- to conduct an inspection only during execution of official duties, to carry out an on - site inspection only upon presentation of identification cards, copies of the order (instruction) of the Head (Deputy Head) of FAS Russia;
- not to prevent the Head, other officer of the inspected entity, nor authorized representative of the inspected entity from presenting information and documents during the inspection and giving explanations on matters relating to the inspection;
- to provide information and documents related to the inspection to the Head, other officer, or to the authorized representative of the inspected entity presenting during the inspection;
- to familiarize the Head, other officer of the inspected entity, or authorized representative of the inspected entity, with the results of the inspection;
- to take into account, while determination of measures to be taken upon the results of inspection and violations revealed the severity of violations: their potential danger to life, health of people, animals, harm to plants, environment, national security, for the occurrence of natural and technological disasters, and also not to allow unjustified restriction of the rights and legitimate interests of individuals, including entrepreneurs, legal entities;
- to prove the reasonableness of their actions, if they are appealed by legal entities and entrepreneurs, in accordance with the legislation of the Russian Federation;
- to observe the time limits of the inspection;
- not to require from the legal entities, nor from entrepreneurs, the documents and other information, presentation of which is not stipulated in the legislation of the Russian Federation;
- before the start of the on - site inspection, at the request of the Head, another officer of the inspected entity, and the authorized representative of the inspected entity, to familiarize them with the provisions of the administrative Regulation which governs the procedure of conduction of inspections;

- to make a record upon conduction of the inspection in the register of inspections;
- not to disclose information constituting state, commercial, official and other secrets protected by law, obtained by the antimonopoly authority, except in cases established by the legislation of the Russian Federation;
- carry out a public function, in accordance with the Regulation.

General provisions relating to inspections

- According to the Regulation, as a general rule, an inspection cannot last more than 30 days. However, if FAS Russia needs additional time, the period of inspection may be extended by not more than 2 months.
- An inspection finishes with the issue of the report, in 2 copies, in the Russian language. This report shall be signed by all members of the inspecting commission.
- 2 independent witnesses are required during the whole process of carrying out of the inspection;
- Upon the request of the inspected entity, and upon presentation of the transfer acceptance act, copies of the submitted documents may be provided.
- Protocols are drawn up for actions taken. The inspected person has a right to add comments to such report.



The number of unscheduled inspections

Scheduled inspections

Scheduled inspections may be conducted not more often than **once in 3 years**.

Grounds for conduction of the inspection:

- Upon expiration of 3 years from the date of creation, or the state registration, of legal entities;
- Upon expiration of 3 years from the date conduction of the last scheduled inspection.

Scheduled inspections are conducted only in respect of those legal entities that are included in the relevant consolidated plan of inspections. This is publicly available at – <https://fas.gov.ru/documents/686263> or <https://proverki.gov.ru>

Latest developments

Due to control and supervisory activities reform, FAS Russia has begun to apply a **risk-based approach**, within which a certain categorization of entities is applied.

Currently there are three categories of risk: medium, moderate and low.

Medium risk category includes:

- retail chains with sales proceeds of over 400 million roubles;
- business entities that are deemed natural monopolies, or engaged in regulated activities, with gross proceeds of over 10 billion roubles.

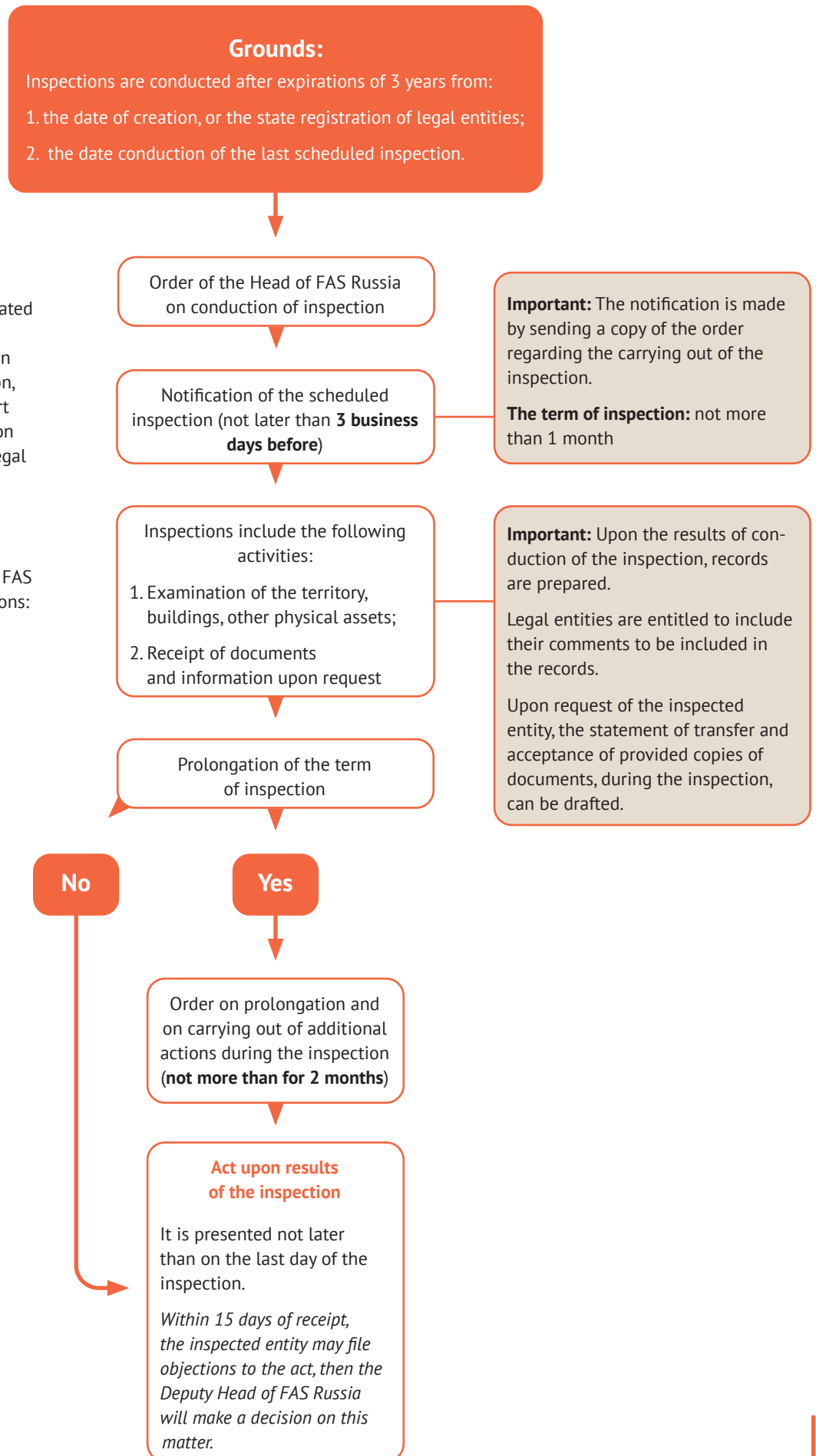
Scheduled inspections, in respect of such entities, can be conducted no more than once in three years

The moderate risk category includes business entities with proceeds of over 10 billion roubles that are engaged in manufacturing and sale of medicines, medical products, medical services, communication services, transportation of gas, oil and petroleum products through pipelines, etc. Scheduled inspections, in respect of such entities, can be conducted no more than once in five years.

Entities that are considered to be in **the low risk category** shall not be subject to scheduled inspections. They shall be considered to the low risk category and shall not be subject to scheduled inspections. The abolition of scheduled inspections in respect of such entities will reduce the administrative pressure on small and medium-sized businesses.

“It should be noted, that the Decree of the President of the Russian Federation, on the main directions of state policy on the development of competition, provides implementation of the risk-based approach in the activities of state control bodies. FAS Russia has already switched to a risk-based approach in the sphere of state defense procurement: now it is time for antimonopoly regulation”, – Sergey Puzyrevskiy, Deputy Head of FAS Russia.

Conduction of scheduled inspections by the antimonopoly authority



! If you find your company included into the consolidated plan of inspections, or you have received a notification of the scheduled inspection, we recommend you to start preparing for the inspection beforehand and turn for legal assistance.

! Do not impede officials of FAS Russia during the inspections: provide them technical assistance.

Important: The notification is made by sending a copy of the order regarding the carrying out of the inspection.
The term of inspection: not more than 1 month

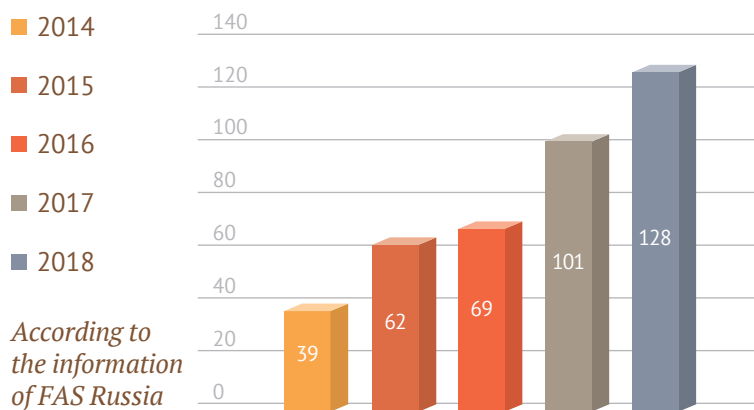
Important: Upon the results of conduction of the inspection, records are prepared.
Legal entities are entitled to include their comments to be included in the records.
Upon request of the inspected entity, the statement of transfer and acceptance of provided copies of documents, during the inspection, can be drafted.

Unscheduled inspections

These may be conducted on the grounds set forth in the Competition Law and the Regulation:

- detection by FAS Russia of violation of the antimonopoly legislation;
- materials received from law enforcement, or other government agencies;
- application of individuals and legal entities, information from mass media;
- order of the President, or the Government of the Russian Federation;
- expiry of the term of execution of the order, issued upon the consideration of a case on violation of the antimonopoly legislation.

⚠ Notification on conduction of the inspection should be made not less than 24 hours before its factual conduction except of the cases when the inspection is conducted on the basis of Articles 11 and 16 of the Competition Law (anticompetitive agreements of economic entities and state authorities).



The number of unscheduled inspections

Conduction of unscheduled inspections (dawn raids)

Grounds:

1. Detection by FAS Russia of violation of the antimonopoly legislation;
2. Materials received from the law enforcement or other government agencies;
3. Application of individuals and legal entities, information from mass media;
4. Order of the President or the Government of the Russian Federation;
5. Expiry of the term of execution of the order issued upon the consideration of the case on violation of the antimonopoly legislation.



For the most successful passing through inspections by the companies, we recommend the following:

1. To develop internal documents and instructions on how to act when the inspection is being conducted;
2. To conduct thematic role seminars recreating a situation of dawn raid inspection (mock raids);
3. To conduct trainings and seminars for the key employees of the company.



Do not impede officials of FAS Russia during the inspections.

It is possible bringing inspected entity to administrative responsibility for such actions.

Order of the Head of FAS Russia on conduction of inspection

Important: Inspections carried out, based on anonymous statements, may be declared illegal.

Notification of the unscheduled inspection (not less than 24 hours before the inspection), except for the cases when inspections are carried out on the basis of possible breach of Article 11, 16 of the Competition Law (anti-competitive agreements of economic entities and state authorities)

Important: It is necessary to examine the provisions of the order (grounds, purpose, subject of inspection, etc.) and powers of the officials.

! Information, concerning the officials on their identification cards, must be the same as information indicated in the Order, regarding the persons who are entitled to carry out the inspection.

The term of inspection: not more than 1 month (from the date specified in the Order).

Conduction of inspections includes the following activities:

1. Examination of the territory, buildings, constructions;
2. Receipt of documents and information upon request

Important: Drawing up reports on the results the of the events (inspected persons have a right to add their comments to such reports). Upon the request of the inspected entity, the statement of transfer and acceptance of provided copies of documents, during the inspection, can be drafted.

Prolongation of the term of inspection

No

Yes

Order on prolongation and on carrying out of additional actions during the inspection **(not more than for 2 months)**

Act upon the results of the inspection is presented not later than on the last day of the inspection.

Within 15 days of receipt, the inspected entity may file objections to the act, then Deputy Head of FAS Russia must make a decision on this matter.



Three golden rules for dawn raids

- **Keep calm:** you always have enough time to fully consider your answers.
- Consult with lawyers, if you consider that answers to questions in the process of inspection can entail negative consequences for you personally and your company.
- Render necessary technical assistance to inspectors within the process of an inspection.
- **Carefully study documents of inspection:** in the order on carrying out of an inspection, there can be technical mistakes.
- Study documents of experts and witnesses: there can be interested persons among them and results of the inspection conducted with their participation. Such cases are subject to the appeal.
- **Document check:** make video and audio recordings.
- Record all actions of participants of inspection, write down questions asked and the answers to them.
- Make a list of the provided information and documents. You will be able to operate with these materials confirming violation of your rights at the appeal of actions of inspection.

“*To the Government of the Russian Federation, together with the Prosecutor General’s office of the Russian Federation: to ensure amendments made to the legislation of the Russian Federation providing for: limiting the number of unscheduled inspections conducted by each control body in respect of legal entities and individual entrepreneurs annually (no more than 30 % of the amount of scheduled inspections provided by the annual plan for conducting the scheduled inspections by each control authority)*”, – Vladimir Putin, the Russian President.

Algorithm of actions during the first hours of inspection

- Do not allow members of inspection team to enter the premises until they hand to the CEO the copy of the order, justifying the inspection and show their identification cards. Prepare some copies of the order: the management of the company has to have information on the participants of inspection team. The order should be always at hand.
- Appoint an authorized representative of the company whom participants of inspection have to contact on any questions regarding the inspection (Clause 3.48 of the Regulation). Hand to the officials, of the inspection, the copy of the order on appointment of such person. It will allow controlling the volume and character of information, provided to the officials. It is desirable to assign the person who will help and resolve all actions required by each participant of the inspection.
- Estimate your own opportunities taking into account the experience of participation in inspections and experience connected with collaboration with law enforcement agencies, interactions with antimonopoly authority, knowledge of the antimonopoly law and also other available resources. If help of external consultants is necessary, urgently contact them and direct a copy of the order on carrying out of the inspection.
- Quickly inform on the conducted inspection representatives of the company which participation can be required during the dawn raid (heads of relevant departments, lawyers, system administrators, representatives of department on public relations, secretariat) and instruct them that interaction with participants of inspection for serious issues should be carried out only through the authorized representative of the company.
- The authorized representative(s) should inform all employees about the inspection by e-mail. Thus, it is necessary to specify that the company has become an object of inspection; it is not necessary to provide any information and to give evidence to inspectors on their own initiative, and it is not permitted to try to hide, nor destroy any documents; it is also prohibited to discuss investigation with the third parties.
- Next, follow the course of the inspection and provide technical assistance to the participants of the inspection, following the previously mentioned "golden rules".

This is a typical algorithm that can be modified according to the specific situation. However, in any case, it is advisable to adhere to these recommendations.





Services rendered by ALRUD regarding conduction of inspections

Preliminary antimonopoly audit of the company activity

- Audit can be carried out as in a complex, or in relation to the compliance with the separate standards of the antimonopoly legislation. In particular, for prevention of dawn raids, it is possible to estimate compliance of activity of the company to provisions of Article 11 of the Competition Law.

Advising and representing clients during the scheduled and unscheduled inspections (dawn raids)

- Advising on risks and prospects for the consideration of the case in FAS Russia, its regional offices and courts.
- Assistance in preparing responses to the requests for information from FAS Russia and its regional offices.
- Advising and representing clients in FAS Russia, its regional offices and courts in the course of resolving disputes related to the violation of antimonopoly legislation.

Conducting training programs, organizing monitoring and reporting systems for employees

- Conducting the seminars for client's employees on compliance with antimonopoly legislation during FAS Russia unscheduled on-site inspections.

Mock raids and conduction of interviews with employees

- Carrying out mock raids, reconstructing circumstances of real unscheduled inspections (dawn raids), held by FAS Russia in the office of the Clients, when ALRUD specialists are acting as officials of FAS Russia and employees of the Client are not aware that the inspection is not a real one.
- Conducting of interviews with the employees based on pre-determined and agreed questions with the Client to determine risky areas and drawbacks of the system adopted within a company, follow-up discussions of key as well as analysis of the mistakes revealed.

Our experience

- Carried out mock raids in the office of one of **the largest transnational, consumer goods company**, in order to check compliance of the Client with the current antimonopoly legislation and prepare employees for real FAS Russia inspections.
- Represented **VimpelCom** during inspections related to the identification and investigation of possible collusion and cartel in the smartphone market.
- Represented one of **the largest worldwide producers of consumer electronics and household appliances**, during an unscheduled FAS Russia inspection and within further review of the antimonopoly case on coordination of economic activity of smartphone resellers aimed at resale price maintenance.
- Developed and conducted a large-scale antimonopoly training program for one of **the multinational manufacturers of optics and medical equipment**, including conduction of trainings, role plays, case studies, tests etc.
- Assisted a Russian division of an **international glass manufacturing group**, during a series of investigations, including unscheduled inspections ("dawn raids") of FAS Russia. As a result, FAS Russia dismissed the case in respect to the Client.
- Successfully represented the interests of a **German-based manufacturer of power tools for logging, agriculture and construction**, within an FAS Russia case on coordination of economic activities, and managed to prove that the company did not commit the violation. ALRUD also assisted the Client during dawn raid carried out in connection to FAS Russia investigation.
- Represented the interests of **Pacific Andes International Holdings Limited** during the investigation of the cartel in the fishing industry, for whom it developed a successful defense strategy. As a result, the Client was not found liable for violating the antimonopoly legislation.

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