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COMPETITION AND COMMODITY PRICE VOLATILITY

Contribution from the Russian Federation

-- Session I --

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-- Russian Federation --

1. Background

- 1. In the frameworks of global economic crisis the FAS Russia pays particular attention to issues of compliance with competition conditions in socially important markets, especially on the food commodities market, the price situation on which dictates the welfare of the citizens of the Russian Federation.
- 2. The Federal Antimonopoly Service (the FAS Russia) especially focuses on control over ensuring of compliance with the antimonopoly legislation on infrastructural and structure-creating markets, where violations of the antimonopoly legislation affect increasing price pressure on the prime commodities (oil and petroleum products markets, artificial fertilizers markets, carriage services markets and etc.).
- 3. Such a focus is predetermined by state policy conducted by the Government of the Russian Federation to support low-income and socially disadvantaged groups of population.
- 4. The FAS Russia and its regional offices on a regular basis carry out **quarterly monitoring of prices for the group of socially important food commodities**: flour, bread, sunflower oil and other commodities in this interconnected chain of its production of these food commodities. The data shown in the present analysis were provided for by the biggest producers/suppliers of the aforementioned food commodities in certain regions of the Russian Federation.
- 5. The results of such monitoring demonstrate that the price situation in the food commodities markets is formed mostly under the influence of objective factors, and in comparison with other factors of economy, to lesser extent depends from the behavior of economy participants.
- 6. **Differences in natural and climatic conditions on different territories** influence productivity of the soil, and as a sequence the supply of food commodities, especially of the crop output (big part of Russia lies in the zone of high- risk agriculture). Sustainability of the agricultural production is significantly lower than other activities due to **changing meteorological conditions**, which dictates significant volatility of volumes of the products supply during different periods. Moreover, the **seasonality of the production** causes irregular sales of goods within a year. **Significant share of perishable food commodities** (vegetables, milk) is to be sold as soon as possible, which triggers prices decrease when these commodities re sold in the market on a massive scale.
- 7. Moreover, the Russian market is still **dependent on import supplies** of the food commodities with major part of the principal food commodities, which is an additional factor impacting fixation of prices on the internal market.
- 8. However, in practice, apart from the objective reasons for the prices increase the antimonopoly bodies face **price growth caused by violation of the antimonopoly legislation**.

- 9. Deterioration of environmental conditions (abnormal heat) in the summer of 2010 became a principal cause of prices increase for buckwheat. The price of manufacturers for buckwheat in December, 2010 in comparison with December, 2009 increased by 225 % (about 16,13 rub/kg to 52,44 rub/kg or in 3,25 times), the consumer prices- by 155 % (about 27,02 rub/kg to 69,03 rub/kg or in 2,55 times), while, according to Rosstat (the Federal State Statistics Service of Russia) the consumer price index on food commodities in total for the same period was 112,9, and a price index of manufacturers of agricultural products 138,3.
- 10. However, in the frameworks of monitoring the principal socially important markets as of October 6, 2011conducted by the FAS Russia and its Regional offices, more than 35 cases on the signs of violation of the Law on Protection of Competition in the market of peeled buckwheat were initiated (3 cases under Article 10 of the Law on Protection of Competition abuse of dominant position, 32 cases under Article 11 of the Law on Protection of Competition agreements and the concerted practices which lead to restriction of competition). In the majority of cases the violations were connected with concerted practices of economic entities in the markets of wholesale and retail sale of the buckwheat, with the purpose to fix and maintain prices. The revealed violations were mainly concerned regional and local markets.

2. Application of the Law on Protection of Competition and official investigations

2.1 Vertical restrictions

- 11. On June, 22 2010 the FAS Russia found that actions of a group of persons, as a part of the Company RusSol Limited, Bassol OJSC, Iletsksol LLC and Russol Trading LLC, constituting conclusion of a forbidden "vertical" agreement by Russol Trading LLC with Bassol OJSC and Iletsksol LLC which led to fixation of the prices for resale of the goods, violated Article 11 of the Federal Law on Protection of Competition.
- 12. The Commission of the FAS Russia found that supply contracts, in accordance with which all the volume of salt made by Bassol OJSC and Iletsksol LLC was transferred to Russol Trading LLC, were concluded between RusSol Limited, Bassol OJSC and Iletsksol LLC.
- 13. According to Point 19 of Article 4 the Law on Protection of Competition, a "vertical" agreement is an agreement between economic entities that don't compete among each other, one of which acquires the commodity or is its potential purchaser, and the other gives the commodity or is its potential seller.
- 14. After the conducted analysis and estimation of competition conditions on the market of salt the FAS Russia concluded that the cumulative share of Bassol OJSC and Iletsksol LLC on the market of salt, suitable for the use in food, amounted to about 30 %, and on the market of technical salt for chemical transformations with the subsequent use for production of other products or for the industrial purposes, not used in food, in the established geographical and products boundaries amounted to more than 30 %.
- 15. During the legal investigation it was revealed that manufacture of salt by Bassol OJSC and Iletsksol LLC was highly profitable.
- 16. Nevertheless, Russol Trading LLC carried out the salt resale to further consumers at the price of purchase of a similar kind of salt, which exceeded by 76,6 % 98,3 % the price for other types of salt.
- 17. Decision made by the FAS Russia was appealed. Commercial courts of two instances upheld the FAS Russia's decision. Russol Trading LLC as the assignee of Bassol OJSC and Iletsksol LLC paid the turnover fine in amount of 706 754 US dollars.

2.2 Abuse of dominant position

- 18. On March, 4 2010 the FAS Russia found that Novorossisk Grain Terminal OJSC (NGT OJSC), entering into a group of persons as a part of Novorossisk Grain Terminal OJSC and Novorossisk Sea Trading Port OJSC (NSGT OJSC), had violated Part 1 Article 10 of the Law "On Protection of Competition".
- 19. The proceedings were initiated both upon the results of examination (carried out by the FAS Russia together with the Regional office of the FAS Russia in Krasnodar) of activity of the economic entities rendering services of transfer of grain and olive cultures for export, and also upon the statement of the Russian Grain Union, which resorted to the FAS Russia concerning tariffs of NGT OJSC on transfer grain for export.
- 20. The Commission of the FAS Russia found that the group of persons as a part of NGT OJSC and NSGT OJSC held a dominant position on the market of transfer of grain and olive cultures for export within the boundaries of deep-water ports of the Azov and the Black Seas pool.
- 21. While analyzing the competition conditions on the aforementioned commodities market, the FAS Russia found that the share of the aforementioned group of persons held more than 50 %, though the originally established tariff for transfer of grain and olive cultures within 2009 increased twice which considerably (for more than 4 times) exceeded actual expenses of NGT OJSC for transfer of 1 ton of grain and olive cultures during the corresponding periods.
- 22. Profitability of sales from the total profit of NGT OJSC in 2008 was 73 %, and after 9 months' period of 2009 it increased to 79,8 %.
- 23. The Commission of the FAS Russia recognized such price level as monopolistically high.
- 24. NGT OJSC and NSGT OJSC were instructed, *inter alia*, to fix the tariff for transfer of grain and olive cultures for export, including the sum of expenses to render this service and profits which would guarantee reception of profits by NGT OJSC (from the total profit gained as a result of the economic activities), which did not exceed 50 %.
- 25. NGT OJSC disagreed with the decision made by the Commission of the FAS Russia, and attacked it in court as well as the Instruction in question. The Decision and Instruction made by the FAS Russia were cancelled by court.

2.3 Other actions for price regulation

- 26. Under the Federal Law of the Russian Federation "On the Basic Principles of State Regulation of Trading Activities in the Russian Federation", the Government of the Russian Federation is empowered to fix limited retail prices for certain types of socially important prime food commodities sold on the territory of certain subject of the Russian Federation or territories of subjects of the Russian Federation, for the term of no more than 90 calendar days if within 30 calendar days running the growth of retail prices for food commodities amounts to 30 and more percent on territory of a certain subject of the Russian Federation or territories of subjects of the Russian Federation.
- 27. The list of such food commodities and rules for fixation of prices are defined by the Order of the Government of the Russian Federation No. 530 of July, 15 2010.
- 28. However, the Government of the Russian Federation has never exercised the aforementioned right.

3. Competition Advocacy

- 29. Alongside with application of measures of antimonopoly regulation, the FAS Russia actively participates in elaboration of other measures of regulatory policy, directed to restrain increase of prices on socially important markets.
- 30. Thus, the FAS Russia participated in elaboration of **operating rules for realization of the state purchasing and commodity interventions** for regulation of the agricultural products, raw materials and food commodities market. The primary goal of the FAS Russia was non-admission of creation of advantages for certain economic entities due to the state interventions which were guaranteed at the expense of interventions through exchange mechanisms.
- 31. Taking into consideration dependence of the domestic market of food commodities on import supplies, the FAS Russia actively participates in elaboration of measures of **customs tariff regulation** of, *inter alia* the markets of agricultural products.
- 32. Thus, for the purposes of non-admission of increase of prices for sugar on domestic markets during the period of growth of the world prices for given products, the FAS Russia initiated amendments to the regulation treatments of the raw sugar import.
- 33. The FAS Russia supported, and in certain cases initiated elaboration of urgent measures of customs-tariff regulation undertaken by the Government of the Russian Federation and directed at expansion of import supplies of certain types of agricultural products, which production considerably suffered from abnormal heat of summer of 2010. Thus, import duties on potato, green-head cabbage and buckwheat were cancelled. The given measures allowed to soften drought and poor harvest consequences, to liquidate an excessive demand, to slow down essentially increase of prices for food prime commodities, and in some cases to decrease them.
- 34. So as to ensure competition conditions on the market of meat, the FAS Russia repeatedly proposed to introduce exchange mechanisms for distribution of the tariff quotas, established for import of meat among importers, which would provide potential possibility for new participants to enter this market.