



**GOOGLE PAID A FINE FOR THE VIOLATION OF ANTITRUST LAW IN RUSSIA**



The trial that lasted over two years in connection with the violation by Google of Russian antitrust law resulted in the conclusion in April 2017 of a settlement agreement with the Federal Antimonopoly Service (FAS Russia).

On 9 May 2017 Google Inc. paid an administrative fine in the amount of 438,067,400 rubles imposed by FAS Russia for the violation of Article 10 part 1 of the Federal Law "On Protection of Competition" (Competition Law) (abuse of dominant position). In addition, Google is obliged to pay fines in the total amount of 1 million rubles for a failure to comply with the prescription of FAS Russia in full and on time.

The case against Google Inc. (USA), Google Ireland Limited (Ireland), and Google LLC (Russia) was initiated by FAS Russia in February 2015 based on the application of Yandex LLC ("Yandex").

In September 2015, FAS Commission which considered the case issued the decision and prescription in connection with violation by Google Inc. and Google Ireland Limited of Article 10, part 1 of the Competition Law.

It was established that Google Inc. and Google Ireland Limited, which held the dominant position at the market of applications' store for Android OS localized for distribution in Russia (due to the market share (58,18%)) performed actions that led to restriction of competition in adjacent commodities markets, in particular: provided Google Play applications' store to manufacturers of smart phones and tablets based on Android operating system (Android OS) (the "Mobile Devices") for pre-installation thereof on the Mobile Devices to be sold in the territory of the Russian Federation only on the following conditions:

- mandatory pre-installation of other Google applications, products and services together with Google Play app store;
- mandatory pre-installation on the Mobile Devices and/or setting together with Google Play app store of Google search engine as the default search engine;
- mandatory placement together with Google Play app store of other applications of Google on the Mobile Device's screen on the spots precisely defined by Google;
- compliance with the prohibition on pre-installation of applications, products and services developed by the manufacturers of the Mobile Devices in consideration of granting by Google of monetary remuneration or other incentives.

These actions were deemed an abuse of the dominant position since promotion by Google of its applications included in Google Mobile Services (GMS) package by tying them with Google Play app store pre-installed on the Mobile Devices had no technological reasons and thus established barriers for entering the market by developers of other applications.

To restore competition in the market, FAS Russia issued a warrant to Google to exclude from the agreements with manufacturers anti-competitive requirements that ensure the exclusivity and priority of placing Google applications and restricting the installation of applications and services of other developers.

Google challenged the decision and order of the FAS Russia in the arbitration court. However, courts of two instances confirmed the legality of acts of the antitrust authority.

Google then addressed FAS Russia with a proposal to enter into a settlement agreement. With the aim of eliminating the consequences of violation of the antitrust legislation and providing for competition in the mobile application markets, FAS Russia signed the settlement agreement, which was approved on 17 April 2017 by the Arbitration Court of the Moscow District.

The settlement agreement provides, in particular, for:

- the waiver by Google of its requirements for the exclusivity of its applications on the Mobile Devices in Russia (this provision is the most important part of the agreement in the opinion of Yandex that participated in the case as a third party);
- obligation not to restrict the pre-installation of any competing search engines and applications (including the default home screen);
- abstaining from stimulating the pre-installation of Google search engine as the only general search engine;
- abstaining from applying in the future provisions of contracts that are contrary to the terms of the settlement agreement;
- obligation to ensure the rights of third parties to include their search engines in the selection window.

Google will develop an active the "selection window" for the browser Chrome for mobile devices that are currently in circulation in Russia, which, with the next update will give the user the option to select the search engine "by default."

For newly released mobile devices Google committed to develop within next few months a new Chrome widget that will replace the standard Google search widget on the main screen of Android OS devices that contain the GMS package. This will allow end users to see the "selection window" the first time the new widget is launched, allowing them to set as the default search engine the Yandex search or Google search or another search engine of the developers who will enter into a commercial agreement with Google to include them in

the selection window. The user will be able to change the settings at any time and select the "default" search engine that suits him/her best.

The settlement agreement will be effective for 6 years and 9 months.

According to Google Vice President, Legal, the corporation has entered into a commercial agreement, approved by FAS, with Yandex, which "provides additional opportunities to promote Yandex search engine in Chrome browser." As part of this agreement, Google "will continue to offer 11 applications (including Chrome and Google Music) as part of the set of applications."

The outcome of these antimonopoly proceedings against Google in Russia may have an impact on similar proceedings being conducted in the European Union, Korea and Turkey.

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GRATA International Moscow provides for a wide range of services in the area of antimonopoly law, including:

- legal advice on antitrust regulation of trade, advertising, state procurement, mergers and acquisitions;
- preparing/review and obtaining a preliminary approval of FAS Russia of terms and conditions of agreements, commercial policies (regulations on counterparty selection) and other documents which may restrict competition;
- obtaining of a preliminary approval of FAS Russia of transactions and other actions aimed at economic concentration.

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