



**APPLE'S SUBSIDIARY WAS RECOGNIZED GUILTY OF VIOLATION
OF ANTIMONOPOLY LAW IN RUSSIA**



On 14 March 2017, the Federal Antimonopoly Service of the Russian Federation (FAS Russia) recognized Apple's subsidiary in Russia, Apple Rus LLC, guilty of coordinating the economic activities of the Apple iPhone resellers, which led to the establishment and maintenance of prices for these devices, in violation of Article 11 part 5 of the Federal Law No. 135-FZ dated 26 July 2006 "On Protection of Competition" (the " Competition Law").

The case was initiated against Apple Rus LLC, as well as Apple Holding B.V., Apple Sales Ireland, Apple Operations International and Apple Inc. on the basis of a complaint of an individual who noticed that the same prices were established for the iPhone 6s and iPhone 6s Plus by the principal retailers: MTS, M.Video, Beeline, Eldorado, Euroset, OZON, Re:Store, Svyaznoy, Megafon, Yulmart, Media Markt, Citylink, Refrigerator.ru, DNS, ION, Technosila.

Upon the results of the investigation, which FAS Russia began in February 2016, it was established that from the beginning of official sales in Russia of Apple iPhone 5s, iPhone 5c, iPhone 6, iPhone 6 Plus, iPhone 6s and iPhone 6s Plus, most resellers established the same prices on these smartphones that Apple Rus LLC recommended, and maintained them for about 3 months.

At the same time, Apple Rus LLC monitored retail prices for Apple iPhone smartphones established by resellers in online stores and retail outlets, and, if "inappropriate" prices were identified, the company sent E-mails to resellers with the requests to change them. Resellers' compliance with the recommended retail prices could have also been conditioned by the provisions of contracts between Apple Rus LLC and resellers, which the company could terminate at any time without explanation.

With respect to Apple Holding B.V., Apple Sales Ireland, Apple Operations International, Apple Inc. the case was terminated due to the absence of a violation of Russian antimonopoly legislation in their actions, since it was not proven that these companies performed actions to coordinate the economic activities of the respective resellers.

In accordance with Article 14.32 part 2 of the Code of Administrative Offenses of the Russian Federation (the "Administrative Code"), the coordination of economic activities of entities prohibited by the antimonopoly legislation involves an administrative fine on officials in the amount of up to 50,000 rubles or disqualification for up to 3 years, on legal entities - up to 5 million rubles.

Furthermore, in December 2016, FAS Russia initiated a case on the grounds of violation by Apple Rus LLC of Article 10 part 1 of the Competition Law in the form of a failure to ensure the use of Apple iPhone 6, iPhone 6 Plus, iPhone 6s, iPhone 6s Plus devices during their service life, as a result of which the interests of an undetermined number of consumers have been infringed.

This case was also initiated on the basis of the application of an individual to whom several Apple service centers in Russia had refused to replace the damaged displays of Apple iPhone 6 Plus smartphone that he acquired in 2015 and of Apple iPhone SE smartphone that he acquired in 2016. The refusal was motivated by the service centers by the fact that repair of a display module in Russia is impossible since the respective spare parts are not supplied to the Russian Federation. Instead of performing the repair they offered to the applicant to replace the smartphone with a similar one subject to additional payment.

FAS Russia has established that currently the only legal entity authorized to supply products of Apple Inc. to the Russian market is Apple Rus LLC, which comprises the same group of persons with Apple Inc. for the purposes of the Competition Law.

Based on the answers of authorized Apple service centers, it was also determined that in the event of a breakdown of the screen modules and motherboards of the iPhone 6, iPhone 6 Plus, iPhone 6s, iPhone 6s Plus devices during the warranty period for these devices and provided that an authorized service center of Apple Rus LLC recognizes it as a warranty case, such devices are replaced for similar new ones free of charge. In the event that a breakdown of the motherboard or the display module occurs after the warranty period expiry or such failure has not been recognized by an authorized service center as a warranty case, the owner of the iPhone 6, iPhone 6 Plus, iPhone 6s or iPhone 6s Plus is entitled to have such device replaced for a similar new one for a charge.

Thus, since all the entities that provide services for the replacement of the screen module and / or motherboard perform such activities without an agreement with Apple Rus LLC or in violation of such agreement, respectively, an owner of Apple device using the respective services loses the guarantee not only for the spare part the repair of which was performed, but also for the device on the whole.

The Commission formed by FAS Russia for review of this case of the violation of the antimonopoly law found that Apple authorized service centers provide repair services for Apple Inc. products on the basis of an agreement between them and Apple Rus LLC. An integral part of this agreement is the Manual for authorized Apple service centers, according to p. 3.3 of which the service representative must perform, in particular, "Repair with mail delivery," which is the repair / replacement of Apple products in a single Apple repair center. In the framework of such repairs it is possible to repair the smartphone screen module. However, at present Apple Rus LLC refuses to enter into relevant contracts despite the requests of Apple authorized service centers.

In this regard, the Commission came to the conclusion that there are signs of violation of Article 10 part 1 p.5 of the Competition Law in the actions (inaction) of Apple Rus LLC in the form of economically and technologically unjustified refusal of the entity holding a dominant position to enter into contracts with business entities (service centers) for provision of services for repairing (replacing) the smartphone screens of Apple Inc. products in Russia.

By the ruling of 20 February 2017 FAS Russia issued a warning to Apple Rus LLC to cease the corresponding actions (inaction) containing signs of violation of the antimonopoly legislation, to be complied with by 1 May 2017. Consideration of the case on the merits, taking into account the documents and materials additionally requested from Apple Rus LLC, is scheduled for 3 May 2017.

In the event that Apple Rus LLC is found guilty of committing the respective violation, an administrative fine may be imposed on it in the amount from 300,000 to 1 million rubles (Article 14.31 part 1 of the Administrative Code).

This information is provided for your convenience and does not constitute legal advice. It is prepared for the general information of our clients and other interested persons and it may include links to websites other than the GRATA International website. This information should not be acted upon in any specific situation without appropriate legal advice.

GRATA International Moscow office provides, in particular, the following services in the domain of antitrust compliance:

- 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 and other documents which may restrict competition
- obtaining of a preliminary approval of FAS Russia of transactions and other actions aimed at economic concentration.

For further information please contact:

Yana Dianova,

Director of the Corporate and Commercial Law Department,

GRATA International Law Firm (Moscow)

Tel: +7 (495) 660 11 84

E-mail: ydianova@gratanet.com